# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS - FORT WORTH DIVISION

LABOR SAVING SYSTEMS LTD.	§	
d/b/a Magnepull,	§	
Plaintiff,	§	
	§	Case No. 4:21-cv-01389
v.	§	
	§	
HARBOR FREIGHT TOOLS USA, INC.,	§	
DOES 1–79,	§	
Defendants.	§	

# APPENDIX IN SUPPORT OF PLAINTIFF'S ORIGINAL COMPLAINT and MOTIONS

Plaintiff Magnepull files these additional exhibits in support of its Original Complaint and Motion for Entry of a (1) Temporary Restraining Order, (2) Asset Restraining Order, (3) Expedited Discovery Order, and (4) Service of Process by Email. This appendix includes:

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Respectfully submitted,

/s/Warren V. Norred

Warren V. Norred, P.E., warren@norredlaw.com

NORRED LAW, PLLC; 515 East Border Street; Arlington, Texas 76010

817.704.3984 office; 817.524.6686 fax

Attorney for Plaintiff

<u>CERTIFICATE OF SERVICE</u> - I certify that a copy of the attached document was served informally to Harbor Freight by email to <u>cs@harborfreight.com</u> by email on January 1, 2022.

/s/ Warren V. Norred Warren V. Norred



US009737941B2

# (12) United States Patent

**Turner** 

(10) Patent No.: US 9,737,941 B2 (45) Date of Patent: Aug. 22, 2017

# (54) HOLE SAW (56) References Cited

## (71) Applicant: Mark Turner, Arlington, TX (US)

- (72) Inventor: Mark Turner, Arlington, TX (US)
- (\*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35

U.S.C. 154(b) by 0 days.

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- (60) Provisional application No. 62/262,813, filed on Dec. 3, 2015.
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See application file for complete search history.

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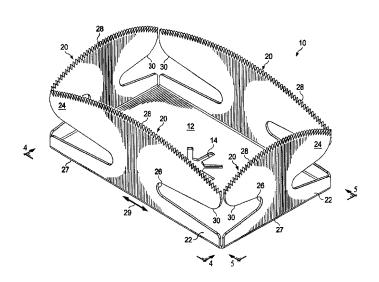
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Primary Examiner — Jason Daniel Prone (74) Attorney, Agent, or Firm — James L. Baudino

### (57) ABSTRACT

A hole saw includes a base member configured to secure the hole saw to a drive device, and a set of blade members extending from the base member. Each of the blade members is attached to the base member at a fixed position, and each of the blade members includes a sawing portion having cutting teeth. The sawing portion has a medial portion connected to the base member where the sawing portion has oppositely extending, freestanding distal ends.

#### 16 Claims, 11 Drawing Sheets



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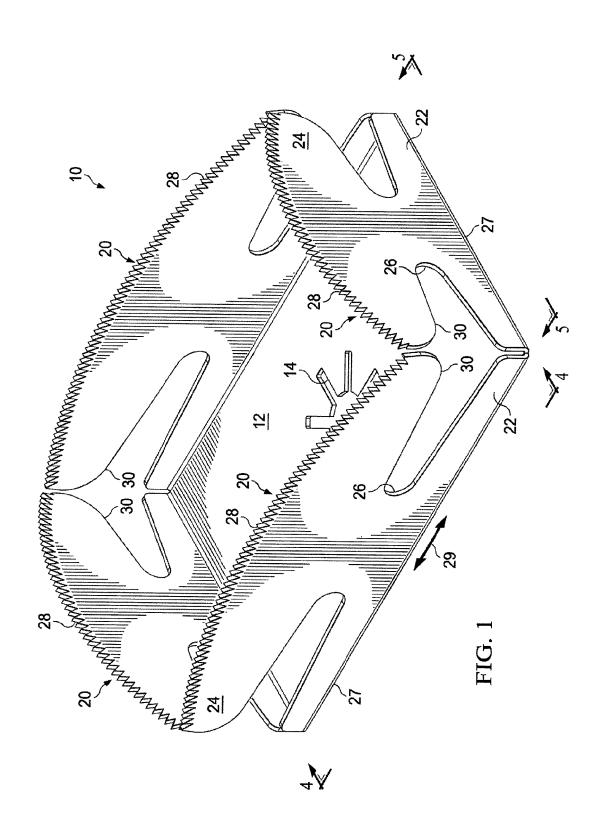
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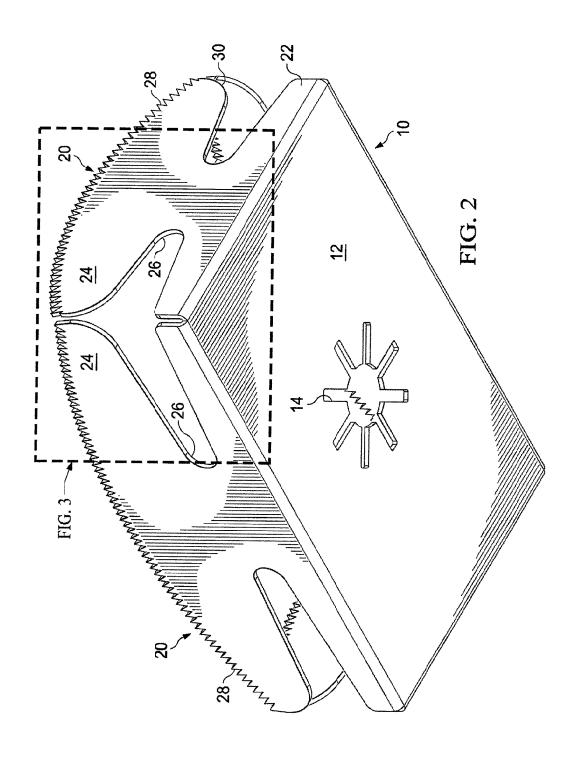
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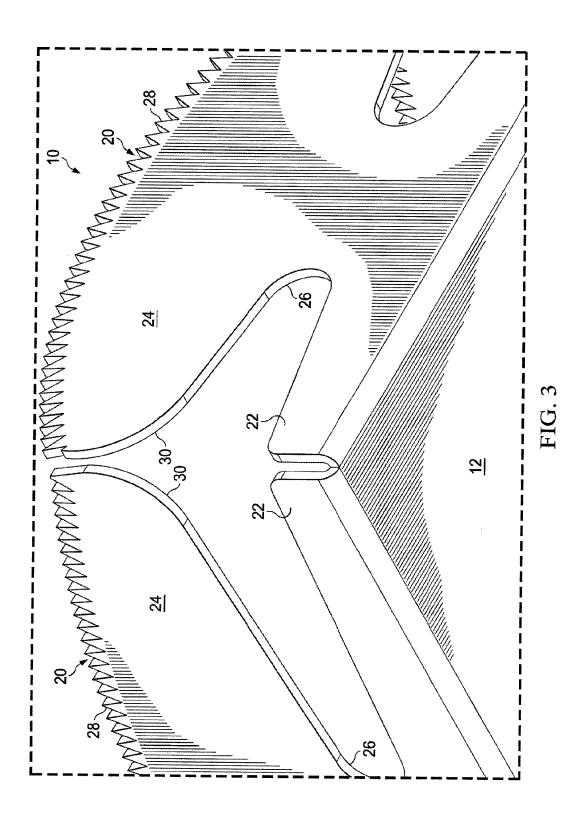
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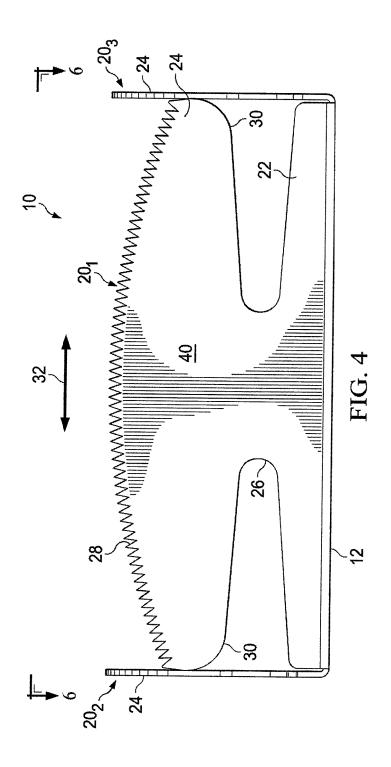
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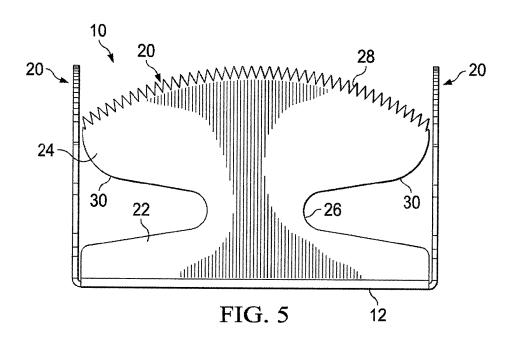
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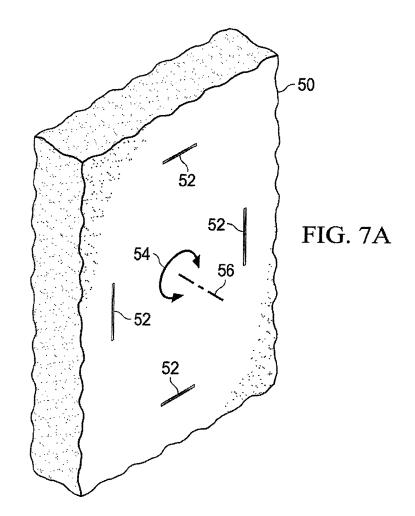
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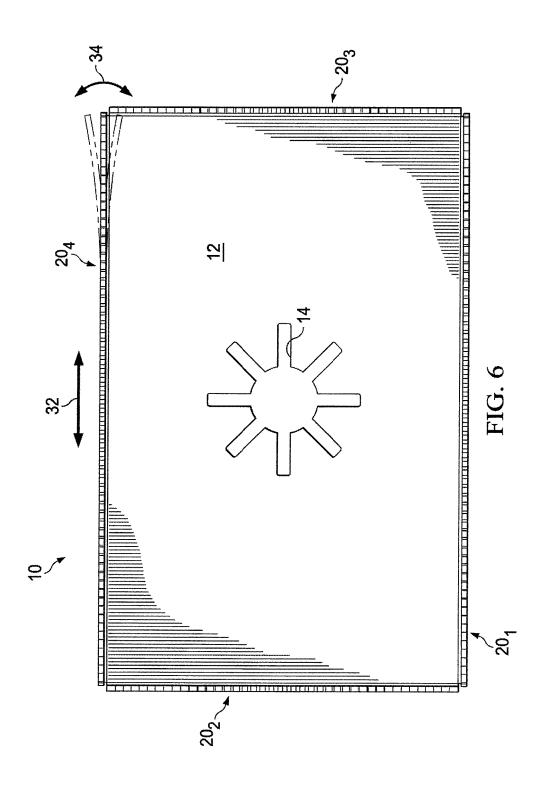
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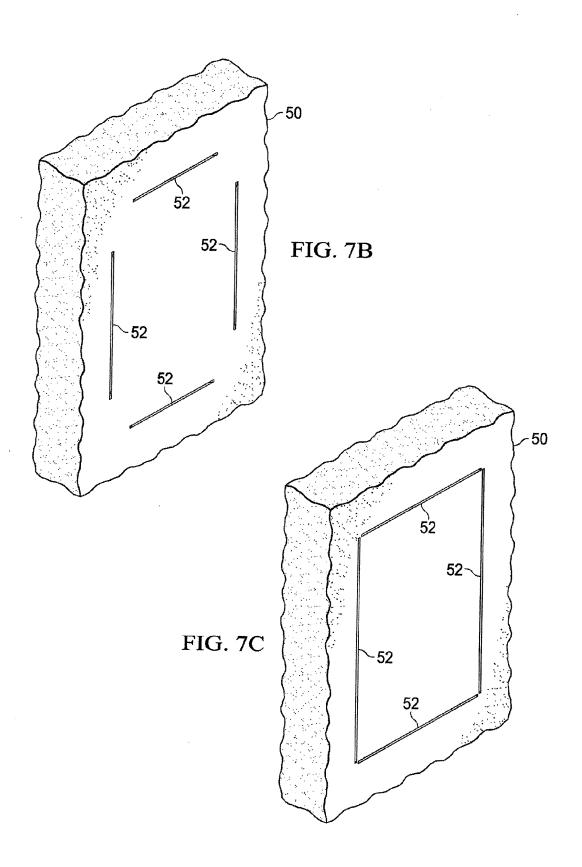
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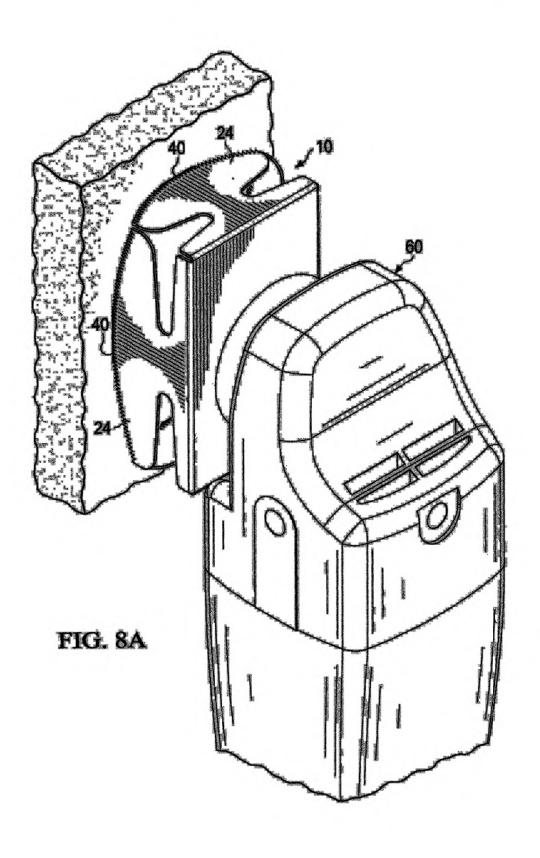


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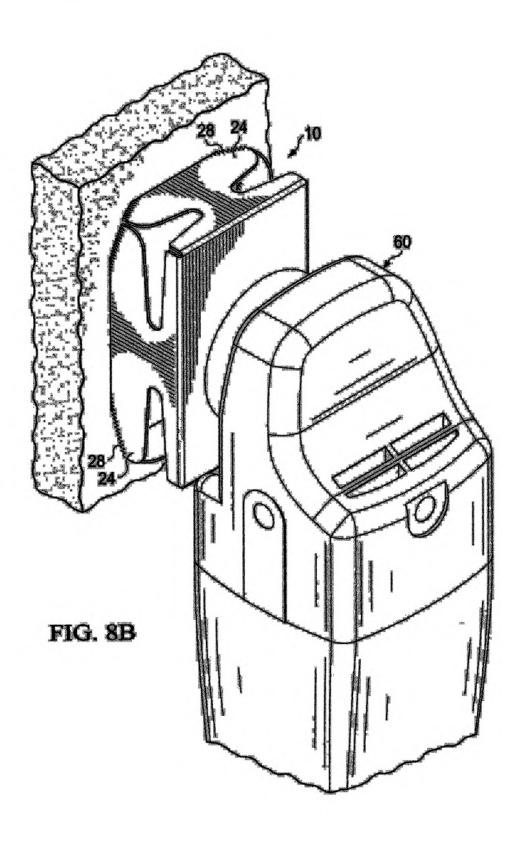
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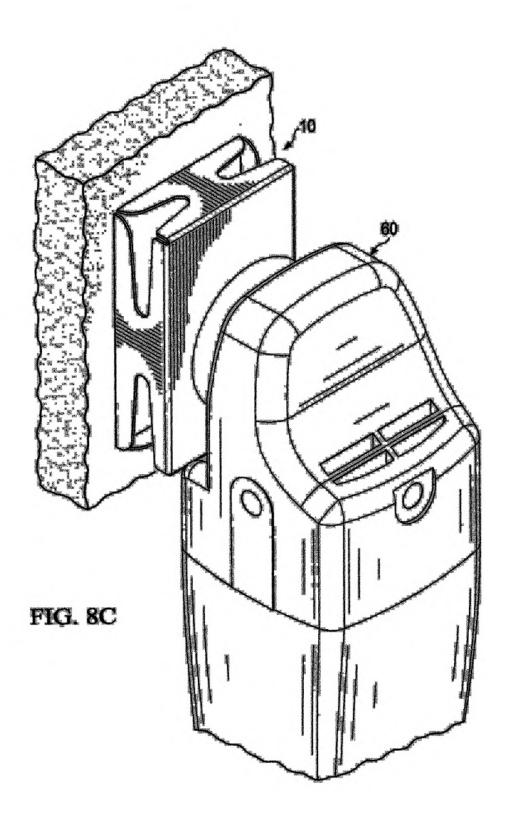
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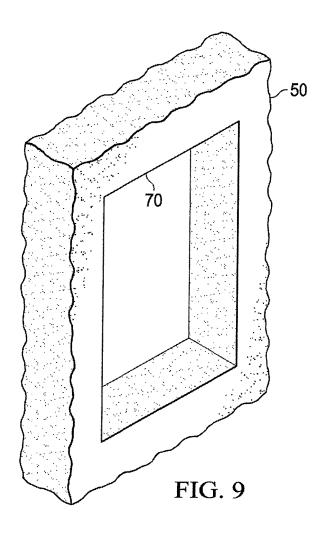
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## 1 HOLE SAW

### **BACKGROUND**

Hole saws are generally used to make cut-outs, holes 5 and/or openings in materials such as wood, fiberglass, plastic, drywall, etc. Holes saws are generally used with a power drill or other type of rotary power drive unit. Hole saws typically include a saw cup, an arbor and a pilot bit. The saw cup includes a threaded portion to receive a threaded end portion of the arbor. The pilot bit protrudes from the cutting edge of the saw to guide the saw during cutting. The arbor is generally inserted into a chuck of the power drill. The saw body is coupled to the pilot bit for rotation with the pilot bit, 15 and the saw body includes a collection of teeth to form a cutting edge. In operation, the power drill causes rotation of the hole saw, and the drill bit first cuts into a structure to establish a pilot hole to maintain the hole saw concentric to a particular point. The cutting edge of the saw body then cuts 20 a relatively larger opening in the structure.

#### **BRIEF SUMMARY**

According to one aspect of the present disclosure, a hole 25 saw is disclosed. The hole saw includes a base member configured to secure the hole saw to a drive device; and a set of blade members extending from the base member, each blade member including a sawing portion having cutting teeth, the sawing portion having a medial portion connected 30 to the base member, the sawing portion having oppositely extending, freestanding distal ends.

According to another embodiment of the present disclosure, a hole saw includes a base member supporting a set of blade members, each blade member having cutting teeth, the 35 blade members arranged in a non-circular relationship relative to each other, and wherein a distance between the cutting teeth and the base member varies along a longitudinal direction of the respective blade members;

According to another embodiment of the present disclo- 40 sure, a hole saw includes a base member supporting a set of blade members, each blade member having a sawing portion with cutting teeth, the sawing portion having a medial portion and oppositely disposed distal ends, and wherein a distance between the cutting teeth and the base member at 45 the medial portion is greater than at the distal ends.

### BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWINGS

For a more complete understanding of the present application, the objects and advantages thereof, reference is now made to the following descriptions taken in conjunction with the accompanying drawings, in which:

a hole saw according to the present disclosure;

FIG. 2 is a diagram illustrating a bottom perspective view of the hole saw of FIG. 1 according to the present disclosure;

FIG. 3 is a diagram illustrating an enlarged view of a portion of the hole saw of FIG. 2 according to the present 60 disclosure:

FIG. 4 is a diagram illustrating a view of the hole saw of FIG. 1 taken from the line 4-4 of FIG. 1;

FIG. 5 is a diagram illustrating a view of the hole saw of FIG. 1 taken from the line 5-5 of FIG. 1;

FIG. 6 is a diagram illustrating a top view of the hole saw of FIG. 1 taken from the line 6-6 of FIG. 4;

FIGS. 7A-7C are diagrams illustrating progressive stages of cuts formed in a structure during a cutting process/ operation using the hole saw of FIGS. 1-6 according to the present disclosure;

FIGS. 8A-8C are diagrams illustrating the hole saw of FIG. 1-6 attached to a drive device and performing the cutting process/operation depicted in FIGS. 7A-7C; and

FIG. 9 is a diagram illustrating a hole formed in a structure using the hole saw of FIG. 1-6 resulting from the cutting process/operation depicted in FIGS. 7A-7C and 8A-8C according to the present disclosure.

### DETAILED DESCRIPTION

Embodiments of the present disclosure provide a hole saw that may be used to form a variety of sizes and/or shapes of holes and/or openings in a structure. According to one embodiment, a hole saw includes a base member configured to secure the hole saw to a drive device; and a set of blade members extending from the base member, each blade member including a sawing portion having cutting teeth, the sawing portion having a medial portion connected to the base member, the sawing portion having oppositely extending, freestanding distal ends. In some embodiments, the hole saw may be attached to an oscillating power tool or oscillating drive device. The oscillating drive device vibrates the hole saw back and forth in a narrow arc (e.g., approximately 3°-4°) and causes the hole saw to create an opening in a structure corresponding to the locations/orientations of the blade members relative to each other.

With reference now to the Figures and in particular with reference to FIGS. 1-6, diagrams illustrating a hole saw 10 according to the present disclosure is illustrated. FIG. 1 is a diagram illustrating a top perspective view of hole saw 10 according to the present disclosure; FIG. 2 is a diagram illustrating a bottom perspective view of hole saw 10 of FIG. 1 according to the present disclosure; FIG. 3 is a diagram illustrating an enlarged view of a portion of hole saw 10 of FIG. 2 according to the present disclosure; FIG. 4 is a diagram illustrating a view of hole saw 10 of FIG. 1 taken from the line 4-4 of FIG. 1; FIG. 5 is a diagram illustrating a view of hole saw 10 of FIG. 1 taken from the line 5-5 of FIG. 1; and FIG. 6 is a diagram illustrating a top view of hole saw 10 of FIG. 1 taken from the line 6-6 of FIG. 4.

In the illustrated embodiment, hole saw 10 is configured to create a rectangular opening in a wall or other structure. However, it should be understood that hole saw 10 may be differently configured to create other sizes and/or shapes of openings (e.g., triangular, hexagonal, octagonal, etc.) based on the locations and/or orientations of the cutting blades of hole saw 10 relative to each other, as described in further detail below.

In the illustrated embodiment, hole saw 10 includes a base FIG. 1 is a diagram illustrating a top perspective view of 55 member 12 for securing hole saw 10 to a drive device (e.g., an oscillating drive device capable of vibrating and/or moving hole saw 10 back and forth in a narrow arc (e.g., approximately 3°-4°)). For example, in some embodiments, hole saw 10 is releasably securable to a drive device such as an oscillating power tool. In the illustrated embodiment, base member 12 includes an opening 14 configured to enable the releasable attachment of hole saw 10 to such drive device. It should be understood that hole saw 10 and/or base member 12 may be otherwise configured to facilitate attachment to different types of drive devices. Also, it should be understood that hole saw 10 may be configured as a permanent and/or non-removable component of a drive device.

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In the illustrated embodiment, hole saw 10 includes a number or set of blade members 20 extending upwardly from base member 12 (e.g., away from the drive device and toward a wall/structure in which an opening is desired). Blade members 20 are located and/or positioned relative to base member 12 to provide a desired size and/or shape of opening in a wall/structure. For example, in the illustrated embodiment, hole saw 10 includes four blade members 20, and each located and extending upwardly at an approximate right angle from a different side of base member 12. How- 10 ever, it should be understood that blade members 20 may be at different angles relative to base member 12 (e.g., to produce a tapered plug having slanted/angled cuts through a structure). In the illustrated embodiment, each blade member 20 is positioned at approximately a right angle (or 15 orthogonally) relative to an adjacent blade member 20 to enable the creation of a rectangular opening in a wall/ structure. However, as described above, the number of blade members 20 and/or positions relative to each other may be varied to create a different size/shape opening in a structure 20 (e.g., three blade members 20 to create a triangular opening).

In the illustrated embodiment, each blade member 20 includes a stabilizing portion 22 located near and connected to base member 12, and a sawing portion 24 connected to stabilizing portion 22 via a necked down or reduced width 25 extender portion 26. For example, in the illustrated embodiment, stabilizing portion 22 extends substantially the entire length of a respective edge 27 of base member 12 and extends upwardly away from base member 12 to a height to provide a sufficient level of rigidity and/or stability for the 30 respective blade member 20. As illustrated in the figures, each sawing portion 24 includes cutting teeth 28 extending along an uppermost edge of sawing portion 24 for cutting into a corresponding wall/structure. Sawing portion 24 extends a distance approximately equal to a distance of a 35 corresponding side of a desired opening size/shape in the wall/structure.

In the illustrated embodiment, extender 26 is located approximately medially relative to a length or longitudinal distance of stabilizing portion 22 (e.g., measured in a 40 direction indicated by 29). Sawing portion 24 extends upwardly from extender 26 and extends distally therefrom in opposite directions to have oppositely disposed (i.e., at opposite ends thereof) freestanding ends 30 (i.e., separated from and/or spaced apart from corresponding locations of 45 stabilizing portion 22). In the illustrated embodiment, sawing portion 24 is configured to have distally located. freestanding ends 30 to enable ends 30 to be flexible to facilitate transverse movement thereof relative to a longitudinal cutting direction of sawing portion 24. For example, as best 50 illustrated on FIGS. 4 and 6, the illustrated hole saw 10 includes four blade members 20 (blade members 20<sub>1</sub>, 20<sub>2</sub>, 20<sub>3</sub> and 20<sub>4</sub>). For ease of description, the operation and/or movement of blade member 20, will be described; however, it should be understood that the operation and/or movement 55 described is equally applicable to blade members  $20_{2}$ - $20_{4}$ . The cutting portion 24 of blade member 20, is configured to cut into a structure along a longitudinal direction 32 (e.g., aligned with the longitudinal direction of the respective blade member 20). Free ends 30 of cutting portion 24 are 60 spaced apart from and/or separated from proximate portions of stabilizing portion 22 to enable lateral and/or transverse movement of ends 30 relative to direction 32 (e.g., movement of ends 30 in a direction 34). For example, if a medial portion of cutting portion 24 (e.g., near extender 26) is held 65 firmly, ends 30 may move or flex in a direction 34 relative thereto because of the unsupported nature of ends 30. It

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should be understood that the distal ends 30 of each blade member 20 may flex in a direction similar to direction 34 based on the respective blade member 20.

As best illustrated in FIG. 3, ends 30 of adjacent sawing portions 24 are disconnected from each other to enable independent movement thereof relative to each other. In the illustrated embodiment, ends of adjacent stabilizing portions 22 are also disconnected from each other; however, it should be understood that ends of adjacent stabilizing portions 22 may also be connected to each other to provide increased rigidity of corresponding blade members 20. It should also be understood that in some embodiments, stabilizing portion 22 may be omitted if extender 26 provides suitable strength, stiffness and/or rigidity to support cutting portion 24. Thus, in such an embodiment, ends 30 of cutting portion 24 would be spaced apart from base member 12 to enable ends 30 to move laterally/transversely relative to a longitudinal cutting direction of a respective cutting blade 20. Thus, extender 26 connects a medial portion of cutting portion 24 to stabilizing portion 22 and/or base member 12 while also being a cantilever support for freestanding or unsupported distal ends 30 of cutting portion 24.

Referring to FIG. 4, cutting portion 24 is configured such that a medial portion or location 40 of cutting portion 24 extends upwardly away from base member 12 a greater distance than distal ends 30. For example, In the illustrated embodiment, the upper edge of cutting portion 24 containing teeth 28 is arcuately formed such that the upper cutting edge of cutting portion 24 curves downwardly from medial location 40 towards distal ends 30. However, it should be understood that the upper edge of cutting portion 24 may also be otherwise formed (e.g., extending linearly downward from medial location 40 toward distal ends 30). Thus, a distance from base member 12 to the cutting teeth 28 is greater at medial location 40 of blade member 20 than at distal ends 30. In other words, the distance from the cutting teeth to the base 12 varies along a longitudinal length/ direction of the respective cutting blade (e.g., decreasing toward the distal ends 30).

FIGS. 7A-7C are diagrams illustrating progressive stages of cuts formed in a structure during 50 of a cutting process/ operation using hole saw 10 of FIGS. 1-6 according to the present disclosure; FIGS. 8A-8C are diagrams illustrating hole saw 10 of FIG. 1-6 attached to an oscillating drive device 60 and performing the cutting process/operation depicted in FIGS. 7A-7C; and FIG. 9 is a diagram illustrating a hole or opening 70 formed in structure 50 using hole saw 10 of FIGS. 1-6 resulting from the cutting process/ operation depicted in FIGS. 7A-7C and 8A-8C according to the present disclosure. In operation, hole saw 10 is placed against structure 50. For example, with hole saw 10 connected to drive device 60, medial locations 40 of sawing portions 24 are initially in contact with the structure 50. As force is applied to hole saw 10 toward the structure 50, teeth 28 begin cutting into the structure 50 in the region of medial locations 40. For example, FIG. 7A is a diagram depicting a surface of structure 50 during an initial phase of the sawing process where teeth 28 have formed initial cuttings or cut paths 52 into the structure 50. With the oscillating drive device 60, hole saw 10 is generally subject to vibrational and/or rotational movement relative to the structure 50. For example, an oscillating drive tool may produce 2°-4° of rotational movement in direction 54 relative to an axis 56. However, at medial locations 40, the rotational movement is substantially tangential to the longitudinal cutting direction

of a respective sawing portion 24, thereby essentially producing a linear and/or non-rotational cutting path 52 into the structure 50

As the cutting process continues and continued force is applied to hole saw 10 toward the structure 50, further 5 portions of teeth 28 located distally from medial locations 40 begin to contact and cut into the structure 50. For example, FIG. 7B is a diagram illustrating the structure after further cutting with hole saw 10 such that the length of cuttings 52 have increased due to additional cutting teeth 28 distal from 10 suited to the particular use contemplated. medial locations 40 coming into contact with the structure 50. Because portions of sawing portion 24 extending distally from medial location 40 become or are separated from stabilizing portion 22, such portions of sawing portion 24 are free to flex and move relative to the medial location 40 (e.g., 15 the distal portions may move laterally/transversely relative to a respective cutting direction of the respective saw blade 20). Thus, in operation, as hole saw 10 moves into the structure, even though the hole saw 10 is being rotationally moved/driven, flexible and/or distal portions of the sawing 20 portions 24 follow the initially formed cuttings 52 which are formed in a longitudinal direction aligned with the respective blade members 20 due to the flexibility of the distal portions of the cutting portions 24. Thus, as hole saw 10 continues to move inward and cut into the structure 50, 25 further portions of cutting portions 24 toward distal ends 30 cut into the structure and follow the previously formed cuttings 52, as depicted in FIG. 7C. Thus, despite the oscillating and/or rotational movement of the hole saw 10 in general relative to the structure 50 (e.g., from drive device 30 each blade member define an arcuately-shaped edge. 60), the flexible portions of the cutting portions 24 located distal to medial locations 40 enable such cutting portions 24 to flex to follow the previously formed cuttings 52 and create such cuttings 52 corresponding to the overall size and/or shape formed by the blade members 20. Accordingly, in 35 operation, the cutting portions 24 of the hole saw 10 enable rotational movement of the hole saw 10 in general to be changed and/or translated into a linear cutting motion corresponding to the longitudinal direction of each respective blade member 20.

Thus, in operation, as the distance from the medial location 40 of the cutting portions 24 toward distal ends 30 increases, the sawing portion 24 becomes increasingly flexible to enable those distal portions of the blade members 20 to flex and follow the earlier formed cutting paths 52 even 45 though the hole saw is being oscillated/rotated relative to the structure. Generally, forming blade members 20 as described herein enables the rotational movement of hole saw 10 to be translated into a linear cutting motion corresponding to the shape/design of the respective blade member 20.

The terminology used herein is for the purpose of describing particular embodiments only and is not intended to be limiting of the disclosure. As used herein, the singular forms "a", "an" and "the" are intended to include the plural forms as well, unless the context clearly indicates otherwise. It will 55 be further understood that the terms "comprises" and/or "comprising," when used in this specification, specify the presence of stated features, integers, steps, operations, elements, and/or components, but do not preclude the presence or addition of one or more other features, integers, steps, 60 operations, elements, components, and/or groups thereof.

The corresponding structures, materials, acts, and equivalents of all means or step plus function elements in the claims below are intended to include any structure, material, or act for performing the function in combination with other 65 claimed elements as specifically claimed. The description of the present disclosure has been presented for purposes of

illustration and description, but is not intended to be exhaustive or limited to the disclosure in the form disclosed. Many modifications and variations will be apparent to those of ordinary skill in the art without departing from the scope and spirit of the disclosure. The embodiment was chosen and described in order to best explain the principles of the disclosure and the practical application, and to enable others of ordinary skill in the art to understand the disclosure for various embodiments with various modifications as are

What is claimed is:

- 1. A hole saw, comprising:
- a base member configured to secure the hole saw to a drive device; and

first and second pairs of blade members extending orthogonally from the base member, the blade members of the first pair disposed parallel to each other, the blade members of the second pair disposed parallel to each other, the first pair disposed orthogonally to the second pair, the base member and the first and second pairs forming an open-sided boxed-shaped hole saw, each of the blade members are attached to the base member in a fixed position relative to the base member, each of the blade members having cutting teeth defining a cutting direction, each of the blade members having oppositely extending, freestanding distal ends, each blade member having a reduced width in the cutting direction located between the cutting teeth and the base member.

- 2. The hole saw of claim 1, wherein the cutting teeth of
- 3. The hole saw of claim 1, wherein each of the blade members includes a medial portion and in each of the blade members a group of the cutting teeth located near the medial portion are located a greater distance from the base member than a group of the cutting teeth located near the distal ends.
- 4. The hole saw of claim 1, wherein each of the blade members includes a sawing portion having the cutting teeth and defining the distal ends and an extender portion defining the reduced width and being disposed between the sawing portion and the base member.
- 5. The hole saw of claim 1, wherein each of the blade members include: a sawing portion having the cutting teeth and the distal ends, wherein the distal ends define a saw portion linear width; a stabilizer portion connected to the base member and having a stabilizer portion linear width substantially parallel to the saw portion linear width; and an extender portion defining the reduced width and connecting the sawing portion and the stabilizer portion.
  - 6. A hole saw, comprising:
  - a base member supporting first and second pairs of blade members, each blade member having cutting teeth extending in a cutting direction, the first pair of blade members arranged in a non-circular relationship relative to the second pair of blade members, and wherein a distance between the cutting teeth and the base member varies along the cutting direction, and wherein each of the blade members is disposed orthogonal to the base member and includes:
  - a stabilizer portion connected to the base member;
  - a sawing portion having the cutting teeth, the sawing portion and the stabilizer portion each extending a length in the cutting direction; and
  - an extender portion extending between and connecting the sawing portion and the stabilizer portion, wherein a length of the extender portion in the cutting direction is less than the lengths of the stabilizer portion and the sawing portion.

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- 7. The hole saw of claim 6, wherein the sawing portion has oppositely disposed, freestanding distal ends.
- 8. The hole saw of claim 7, wherein the distance in each of the blade members at a medial location of the sawing portion is greater than the distance at distal ends.
- 9. The hole saw of claim 6, wherein the first pair of blade members are located orthogonal to the second pair of blade members.
- 10. The hole saw of claim 6, wherein the cutting teeth of each of the blade members define an arcuate edge.
- 11. The hole saw of claim 6, wherein the extender portion is medially located relative to the sawing portion and the stabilizer portion.
- 12. The hole saw of claim 6, wherein the sawing portion has oppositely disposed, freestanding distal ends located in 15 spaced apart relationship from distal ends of the stabilizer portion, the sawing portion configured to enable the distal ends of the sawing portion to flex laterally relative to the cutting direction independently of the distal ends of the stabilizer portion.
  - 13. A hole saw, comprising:
  - a base member supporting first and second pairs of blade members extending perpendicular to the base member, the blade members of the first pair disposed parallel to each other, the blade members of the second pair 25 disposed parallel to each other, the first pair disposed orthogonally to the second pair, each of the blade members having a sawing portion with cutting teeth defining the cutting direction, the sawing portion hav-

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ing oppositely disposed distal ends, each blade member having a reduced width in the cutting direction located between the cutting teeth and the base member, and wherein in each of the blade members a distance between the cutting teeth and the base member at a medial location of the sawing portion relative to the cutting direction is greater than at the distal ends, and wherein in each of the blade members the distal ends are configured to flex transversely relative to the cutting direction, and wherein the base member is configured to be fixedly coupled to a drive device to enable the base member to rotationally oscillate relative to a structure in response to receiving oscillating, rotational movement via the drive device, the rotationally oscillating movement of the base member causing each of the blade members to simultaneously create a linear cut through the structure.

- 14. The hole saw of claim 13, wherein the cutting teeth of each of the blade members define an arcuately-shaped edge.
  - 15. The hole saw of claim 13, wherein the sawing portion is connected to the base member via an extender portion and the extender portion defines the reduced width.
  - 16. The hole saw of claim 13, wherein each of the blade members further include a stabilizer portion connected to the base member; and a necked-down extender portion defining the reduced width and connecting the sawing portion and the stabilizer portion.

\* \* \* \* \*

# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS - FORT WORTH DIVISION

LABOR SAVING SYSTEMS LTD.	§		
d/b/a Magnepull,	§		
Plaintiff,	§		
	§	Case No.	
v.	§		
	§		
HARBOR FREIGHT TOOLS USA, INC.,	§		
DOES 1–79,	§		
Defendants.	§		

### **DECLARATION OF MARK TURNER**

- 1. "My name is Mark Turner. I am over eighteen years of age and am legally competent to make this declaration, which is true and correct, is based on my personal knowledge.
- 2. Labor Saving Systems Ltd. d/b/a Magnepull, is a Limited Liability Partnership in Arlington Texas, which I own. It operates a website found at https://www.magnepull.com/
- 3. I make this declaration in support of Plaintiff's Original Complaint and all exhibits attached thereto (collectively, the "Complaint"), and in support of Plaintiff's *Ex Parte* Motion for Temporary Restraining Order, and Service of Process by email, and all exhibits attached thereto (collectively, the "Motion"), all of which I have read in their entireties. All of the information contained in the Complaint and the Motion is within my personal knowledge, is true and correct. I have come to personal knowledge of the stated facts in the Complaint, the Motion, and this Declaration by virtue of my position as Magnepull's founder and owner.
- 4. I filed what is now U.S. Patent No. 9,737,941 for the "Hole Saw" ("Patent"). I assigned all rights to the Patent to Magnepull. The assignment is filed with the USPTO. The Patent is attached as Exhibit 1 to the Complaint.

- 5. I began making the Hole Saw in 2016 and I sold them at that time in 15 stores, 1 show, and 2 websites in Texas. I then add the hole saw to <a href="https://www.magnepull.com/">https://www.magnepull.com/</a> store in 2020 and have since sold tens of thousands of units of the Hole Saw to customers around the world. Because all of the Hole Saw ornaments are handmade steal saws, they have become enormously popular over the years, which has resulted in accumulating substantial consumer goodwill on an international level.
- 6. As of the date of this declaration, Magnepull has over 1,900 followers on Facebook and thousands of reviews across Amazon, Ebay, Home Depot, Graybar Electric, Dow Electronics, Locke supply, Discount Low Voltage, HB Distributors, Custom Tool Supply, Toolnut, Markertek, Technec, North American Cable Equipment, Northfolk Wire & Electronics, Budco, Root Brother Mfg. And Supply Co., Kansas City Electrical Supply, Border States Electric Supply (Harris Electric), Sheilds Electronic Supply, Altex, Hannan Supply Company, Data Optics Cable Inc., Elliot Electric Supply, Morrison Supply, Reynolds, Rexel Electric, FS3 Inc., Codale Electric Supply, Inc., and Centurytel a majority of these reviews speak to the exceptional materials, style, and workmanship of Magnepull's hole saw.
- 7. On July 31, 2002, I purchased the <a href="https://www.magnepull.com/">https://www.magnepull.com/</a> domain name and began running an independent website for my business at that domain (the "Magnepull Website"). Product Patent numbers, as well as pending Patent numbers, are proudly displayed with each corresponding product.
  - 8. Prices for authentic Magnepull Hole Saw's range from \$45.00.
- 9. All authentic Magnepull products are sold online via the <a href="https://www.magnepull.com/">https://www.magnepull.com/</a> and 14 websites, which feature proprietary content and inventions exclusive to me. I have never assigned or licensed my Registration, and I have never signed any licensing agreements with any

third parties to manufacture, distribute or otherwise use its Hole Saw Products. I maintain strict quality control standards for all of my products, which are wholly manufactured and distributed by me, in Arlington, Texas.

- 10. I have been diligent in monitoring potential infringements of my products over the years. I recently noticed that many individuals and companies had started selling infringing copies of the Hole Saw on online webstores (the "Infringing Webstores"). In learning of this wide-spread infringement, I sent many of these infringing sellers cease and desist demands, in addition to reporting them on their respective webstores.
- 11. After further investigation, within the span of about a month, I found dozens of infringers who have been manufacturing, using, offering, and selling the Accused Products through over one-hundred (100) unique online listings these infringers are the Defendants against whom this lawsuit has been filed (the "Defendants").
- 12. Prices for the Accused Products are both lower, and higher, than the prices of genuine Magnepull products. The Accused Products are also of substantially lower quality than the genuine Products and are available to ship to purchasers in the United States and to purchasers within the Northern District of Texas, as well as purchasers in surrounding countries.
- 13. Financial compensation will not be enough to account for the Defendants' infringing actions because the Defendants' actions have caused and are still causing Magnepull loss of quality control over its own products, and damage to Magnepull's reputation and goodwill. Such damage is irreparable.
- 14. Because the Defendants are selling the Accused Products from foreign jurisdictions (primarily China), without providing their mailing or physical contact addresses and while operating the Infringing Webstores using fictitious names I expect that the Defendants, upon

receiving notice of this lawsuit, will withdraw their illegally-obtained profits, close their Infringing Webstores, and disappear. It is thus vitally important that the Defendants' assets be restrained as soon as possible to prevent this from happening, which could result in enormous financial loss for Magnepull.

15.I have been unable to access the Defendants' personal and contact information, as this information is not made public. However, valid email addresses must be established and verified by each of the various e-commerce platforms on which the Defendants operate, before the Defendants are able to list their products. Therefore, each Defendant in this case had to provide the relevant e-commerce platforms, with a working email, in order to operate and conduct business. I have been unable to contact but a fraction of those I have attempted to discuss this dispute. A true set of archetypical emails showing these efforts are attached as Exhibit 6.

Executed on, December 29, 2021,

Mark Turner

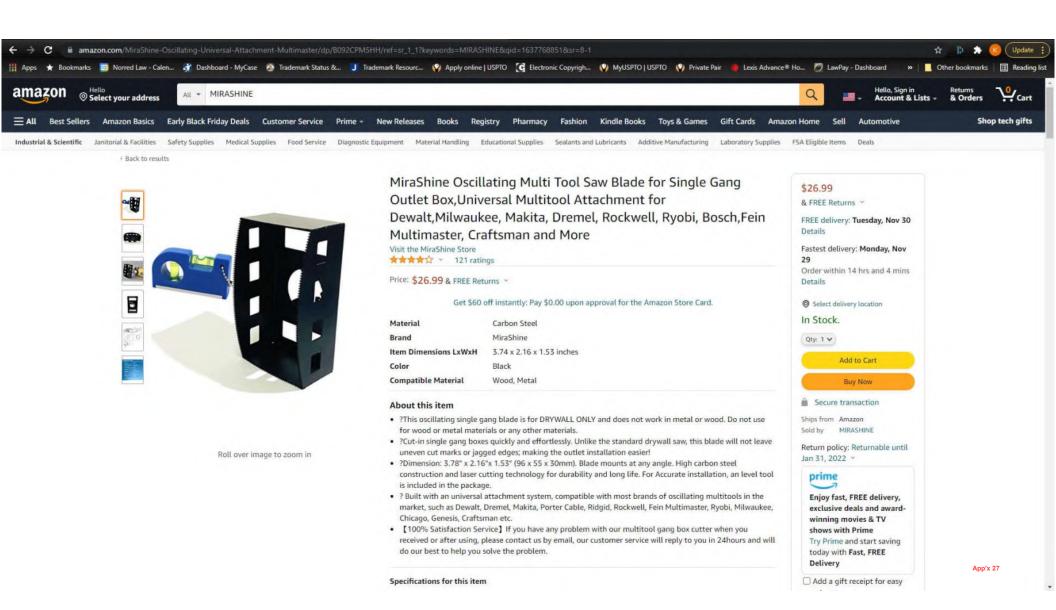
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		https://paili2020.en.alibaba.com/?spm =a2700.wholesale.cordpanyb.2.4ddd2f	er_Power_Oscillating_Multi_tool_Boxed_Blade_Saw.html?s
38 Alibaba	Yiwu Paili E-Commerce Firm	8cWiWoLh	pm=a2700.shop plser.41413.11.21c64965yx8MFC
36 Alibaba	Tiwa Fail E-Commerce Firm	BEWIWOLII	https://cnonetwothree.en.alibaba.com/product/160037161
			5444-
			828984717/Oscillating_Multi_Tool_Blade_Saw_for_Single_C
		https://cnonetwothree.en.alibaba.com	ang_Outlet_Box_Square_Slot_Cutter_with_Four_Blades_Mu
		/?spm=a2700.wholesale.cordpanyb.2.5	lti_Tool_Single_Double_Gang.html?spm=a2700.shop_plser.
39 Alibaba	Zhuhai Onetwothree Technology Co., Ltd	31221c4qmxnRA	1413.13.19dd531cd0rcY1
		https://leite20150120.en.alibaba.com/	https://leite20150120.en.alibaba.com/product/1600324280 194- 820896345/Amazon_Hot_Qbit_Stainless_Steel_Saw_Square
		?spm=a2700.details.cordpanyb.2.7369	_Slot_Cutter_Power_Oscillating_Multi_tool_Boxed_Blade_S
40 Alibaba	Shenzhen Hongying Supply Chain Co., Ltd.	29567CzRgd	aw.html?spm=a2700.shop_plser.41413.14.78d45250wup6c
			https://paili2020.en.alibaba.com/product/1600367795817-
		https://paili2020.en.alibaba.com/?spm	0/Amazon_Hot_Qbit_Stainless_Steel_Saw_Square_Slot_Cut
41 Alibaba	Yiwu Paili E-Commerce Firm	=a2700.wholesale.cordpanyb.2.52d52f 8chmcl3l	er_Power_Oscillating_Multi_tool_Boxed_Blade_Saw.html?s pm=a2700.shop_plser.41413.11.1fd44965c1Bnhk
		https://toolwaygroup.en.alibaba.com/	https://toolwaygroup.en.alibaba.com/product/1600317406 92- 905333508/TOOLWAY_75_75_22mm_Oscillating_multi_too _quick_change_HCS_box_cutter_cutting_tools_for_plaster_
		?spm=a2700.wholesale.cordpanyb.2.74	board.html?spm=a2700.shop_plser.41413.27.7f13e43aixzag
42 Alibaba	Shanghai Toolway International Trading Ltd.	8842fdiTzPt3	n
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		?spm=a2700.wholesale.cordpanyb.2.74	w_blades_quick_change_double_socket_box_cutter.html?s
43 Alibaba	Shanghai Toolway International Trading Ltd.	8842fdiTzPt3	pm=a2700.shop_plser.41413.20.2e4be43aB2SivA
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			826800685/Stainless_Steel_Square_Slot_Cutter_Quickly_ar
		https://cn1524390485ugcp.en.alibaba.	Effortlessly Cut in Single and Double Gang Boxes Mak
		com/?spm=a2700.wholesale.cordpany	a Smooth Cutting Surface.html?spm=a2700.shop_plser.4
44 Alibaba	Shenzhen Fengan Trade Co., Ltd.	b.2.616e1f36KEm9dN	1413.16.42dc3364aqLdDP
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			825804796/New_Square_Slot_Cutter_Universal_Open_back
		https://mixiang.en.alibaba.com/?spm=	ed Design for Plasterboard Dry Wall Gang Socket Holes
		a2700.wholesale.cordpanyb.2.637e1b8	Opener Tools Square Slot Cutter.html?spm=a2700.shop
45 Alibaba	Shenzhen Mixiang E-Commerce Co., Ltd.	aYHTvL6	plser.41413.18.61f94d52ZcAyNK

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46 Alibaba	Shenzhen Wasailang Trading Co., Ltd.		a2700.wholesale.cordpanyb.2.6d097e2 5hvb1Mo		ang_Socket_Holes_Opener_Tools.html?spm=a2700.shop_pl: er.41413.16.6af45f02pmbJg6
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47 Alibaba	Hangzhou Xiaoshan Changyu Metal Machinery Co., Ltd.		p3m		ade.html?spm=a2700.shop_plser.41413.38.6ce63536xz0JYN
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					Multi-Tool-Single-And-Double-Gang-Electrical-Wall-Outlet-
					Compatible-With-Most-Industry-Standard-Oscillating-Multi-
48 Walmart	dongguanshichunshuwangluokejiyouxiangongs				Tools-Pr/307711729?athbdg=L1400
					https://www.walmart.com/ip/MEGAWHEELS-Square-Slot-
					Cutter-Multifunction-Widely-Used-Precise-Cutting-
49 Walmart	Mega Wheels			EK1103801	Tool/441897732
			https://www.salasaataaaa/aallaa/1010		https://www.walmart.com/ip/Latady-One-Step-Place-
			https://www.walmart.com/seller/1010 95559?itemId=565685299&pageName=		Stainless-Steel-Square-Slot-Cutter-Plastic-Metal-Low-Voltage Electrical-Boxes-mounting-Compatible-Most-Industry-
50 Walmart	Latady	GreatVista Inc	item		Standard-oscill/565685299
30 Walifiart	Latady	Greatvista inc	https://www.walmart.com/seller/1011		https://www.walmart.com/ip/Tenvolts-Open-Backed-Square
			02081?itemId=716447114&pageName=		Slot-Cutter-Square-Rectangle-Socket-Hole-Opener-
51 Walmart	Tenvolts	Tenvolts Llc	item		A/716447114
		Joybuy / Jingdong E	-		https://www.walmart.com/ip/HOTBEST-Slot-Cutter-Square-
		Commerce (Trade)			Rectangle-Milling-Cutter-Carving-One-Step-in-Place-Stainless
		Hong Kong	1	_	Steel-Square-Slot-Cutter-Stainless-Quickly-for-Plastic-
52 Walmart	HOTBEST	Corporation	8?itemId=799885148&pageName=item	64	Metal/799885148?athbdg=L1400
			https://www.walmart.com/seller/1010		https://www.walmart.com/ip/Machine-Tool-Accessories-
F3 14/-1	Development in Discription and Very Visco Council	Happy Shopping /	86117?itemId=790044072&pageName=		And-Tools-Milling-Cutter-Rectangular-High-Quality-New-
53 Walmart	DongGuanShiNuoLinDianZiShangWuYouXianGongSi	Nuolin	https://www.walmart.com/seller/1010		Square-Woodworking-Slot-Cutting-Fast/790044072
			87560?itemId=997570286&pageName=		https://www.walmart.com/ip/Careslong-Square-Slot-Cutter-
54 Walmart	shenzhenshiyulantiandianzikejiyouxiangongsi	Careslong	item	EK11038	Multifunction-Widely-Used-Precise-Cutting-Tool/997570286
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55 Walmart	Wuhan Hengxiang Dianzishangwu Youxiangongsi	Lacyie/Lucky Home	item	VB0046901	Precise-Cutting-Widely-Use-Square-Milling-Tool/482223265
			https://www.walmart.com/seller/1010		https://www.walmart.com/ip/Floepx-Square-Slot-Cutter-
			73466?itemId=208010119&pageName=		Stainless-Steel-Slotter-Tool-Woodworking-Cutter-for-Drywall
56 Walmart	Floepx	VEXIP, LLC.	item	M202110210134	Electrical-Box-Cutout-Saw-Accessory/208010119
		Fallows Clathing /	http://www.alacat.com/allac/1000		https://www.walmart.com/ip/Follure-Square-Slot-Cutter-
57 Walmart	Jingdong E-Commerce (Trade) Hong Kong Corporation	Follure Clothing /	https://www.walmart.com/seller/1898 8?itemId=434117044&pageName=item	Folloro 43E0	without-Repairing-Rectangular-Cutting-and-Milling-Cutter- Tools/434117044
37 Walifiait	Jingdong E-Commerce (Trade) Hong Kong Corporation	joybuy	https://www.walmart.com/seller/1010		https://www.walmart.com/ip/Daciye-Universal-Open-
					Backed-Square-Slot-Cutter-Slot-Drill-Socket-Holes-Opener-
58 Walmart	Shenzhen UEB Technology Co.,Ltd.	Daciye LLC	item	mhl	Tools/389469896?athbdg=L1700
					https://www.walmart.com/ip/Black-Friday-Deals-2021-O-Ne-
			https://www.walmart.com/seller/1010		Step-Black-Stainless-Steel-Square-Slot-Cutter-For-Plastic-
			77427?itemId=751703550&pageName=		Metal-Or-Low-Voltage-Electrical-Box-
59 Walmart	Josenmon Trading Co Ltd	YIISU	item		Installation/751703550?athbdg=L1400
					https://www.walmart.com/ip/MIARHB-Place-Stainless-Steel-
			https://www.usalma-st/U/2000		Square-Slot-Cutter-For-Plastic-Metal-Or-Low-Voltage-
60 Walmart	lingdong E-Commerce (Trade) Hong Kong Corneration	MINPHP	https://www.walmart.com/seller/1898 8?itemId=400152851&pageName=item		Electrical-Boxes-Mounting-Compatible-Rectangle- Square/400152851
60 Walmart	Jingdong E-Commerce (Trade) Hong Kong Corporation	MIARHB	https://www.walmart.com/seller/1010		https://www.walmart.com/ip/Exywaves-Square-Slot-Cutter-
			55603?itemId=875399185&pageName=		Without-Repairing-Rectangular-Cutting-And-Milling-Cutter-
61 Walmart	WEELBIN HOME INC	Exywaves	item		Tools/875399185
		,	https://www.walmart.com/seller/1011		https://www.walmart.com/ip/Royal-Qak-Universal-Open-
			09657?itemId=664570043&pageName=		Back-Square-Slot-Cutter-Square-Rectangle-Socket-Hole-
62 Walmart	Royal Oak Inc	ROYAL OAK	item	tl3513	Opener/664570043

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63 Walmart	ongyanshixinzhimumaoyiyouxiangongs	Mumaoyi/DWWRD	item	lxs-10.27	Opener/277685189
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			99529?itemId=300161011&pageName=		Slot-Cutter-Square-Rectangle-Socket-Hole-Opener-
64 Walmart	Jnk Sellers Corporation	RNUIOH	item	591078.01-WMY	A/300161011?athbdg=L1700
					https://www.walmart.com/ip/LOVECOM-Stainless-Steel-
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			24242?itemId=676035271&pageName=		Gang-Boxes-Make-Smooth-Cutting-Surface-Plastic-Metal-
65 Walmart	RECOLORIZED HOME INC	LOVECOM	item	LL83126	Low-Voltage/676035271
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66 Walmart	GreatVista Inc	Tukinala	item	WDD438	Multi-Tools-Universal-Fit-Most-Power-Tools/987571012
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					Slot-Cutter-Square-Rectangle-Milling-Cutter-Quickly-For-
		Joybuy Express /	https://www.walmart.com/seller/1621		Plastic-Metal-Low-Voltage-Electrical-Boxes-mounting-
67 Walmart	JD E Commerce America Limited	Miuline	4?itemId=710427968&pageName=item	20001388903@#lxj48	Compatible/710427968
			https://www.walmart.com/seller/1010		https://www.walmart.com/ip/HGYCPP-Square-Slot-Cutter-
			80924?itemId=368683889&pageName=		Durable-Stainless-Steel-Compatible-with-Most-Industry-
68 Walmart	GLASSY SHELF LIGHT INC	HGYCPP	item	HGYCPP	Standard-oscillating-Multi-Tools-Rectangle/368683889
			https://www.walmart.com/seller/1010		
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69 Walmart	Shenzhenshixishenglunmaoyiyouxiangongsi	Ankishi	item		Milling-Cutter-Woodworking-Square-Hole-Tool/661422914
			http://www.index.org/and/1010		https://www.walmart.com/ip/Bellanny-Square-Slot-Cutter-
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70 Walmart	Jinhuashirunzhishimaoyiyouxiangongsi	Bellanny	87615?itemId=487769153&pageName= item		Board-Drywall-Rectangle-Square-2-36-x-1-54in-3-74-kindly/487769153
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71 Walmart	longyanshixinzhimumaoyiyouxiangongsi	Mumaoyi Inc	item	czy-10.29	Opener/212203984
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			85404?itemId=986286760&pageName=		https://www.walmart.com/ip/Square-Slot-Cutter-Precise-
72 Walmart	Wuhan Huixinhengtong Maoyi Youxiangongsi	Houssem Aouar	item		Cutting-Widely-Use-Square-Milling-Tool/986286760
					https://www.walmart.com/ip/Younar-Square-Slot-Cutter-
			https://www.walmart.com/seller/1010		Cutter-Milling-Carving-Woodworking-Tools-For-Gypsum-
			88699?itemId=375362969&pageName=		Board-Drywall-Rectangle-Square-2-36-x-1-54in-3-74-
73 Walmart	ShenzhenshiXiaodahuanMaoyiYouxiangongsi	Younar	item		thrifty/375362969?athbdg=L1700
					https://www.aliexpress.com/item/1005003200885679.html?
					spm=a2g0o.productlist.0.0.12b4d7929nk1l5&algo_pvid=d34 13c07-8339-460a-a230-
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74 Aliexpress					84%22%7D
					https://www.bonanza.com/listings/New-Bauer-Electrical-
			https://www.bonanza.com/booths/Mo		Box-Cutout-Saw-For-Oscillating-Multi-Tools-Single-Gang-
75 Bonanza	MovingWheelz's booth		vingWheelz		New/929531927
					https://www.homelectrical.com/212-x-331-q-bit-single-gang
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77 canadianhastsallar					gang-outlet-box-qbit-sq1000-d-power-oscillating-multi-tool-
77 canadianbestseller					saw-blade/?v=7516fd43adaa#gsc.tab=0 https://niagarablue.com/products/square-slot-cutter-square
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Roll over image to zoom in

Square Slot Cutter, Stainless Steel One Step in Place Square Milling Cutter Carve, Compatible with Most Industry Standard oscillating Multi-Tools (Rectangle & Square)

Brand: folconroad

★★☆☆ × 9 ratings

## Currently unavailable.

We don't know when or if this item will be back in stock.

Material

Stainless Steel

Brand

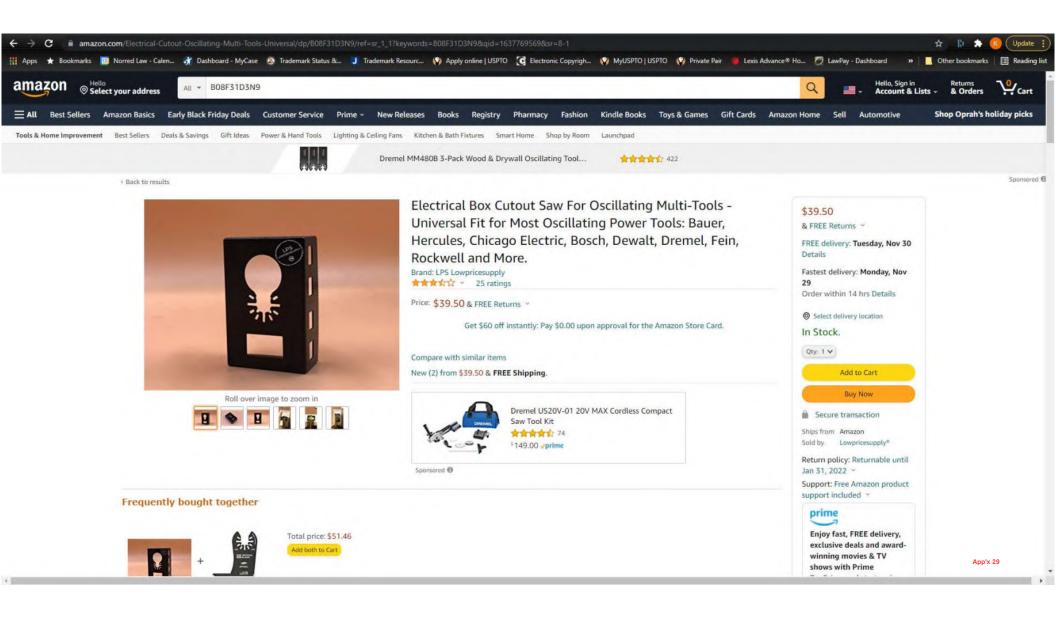
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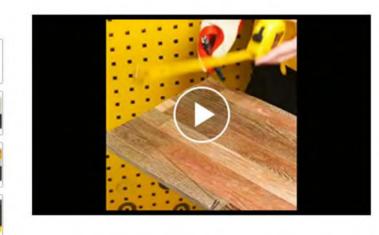
Compatible Material

Stainless Steel

### About this item

- [Efficient]: Specifically Designed to Cut-In single and double gang boxes, Four blades cut at the same time and the cutting surface is smooth and tidy.
- [Precise cutting]: 2-3/8" x 3-3/4" single-row slot or 3-3/4" x 4" double-row slot can be precisely made on dry wall
- [Wide compatibility]: Compatible with most industry standard swing multi-function tools on the market, Suitable for Plaster wall, gypsum board, etc.
- [Sturdy and durable]: The use of high-quality hard stainless steel structure and laser cutting technology, sturdy and durable.
- [Note] :Used for 18V, 20V and wired oscillation multi-tools (some require adapters). It does not apply to 12V systems.





Slot Cutter 2021 Square Rectangle Milling Cutter Carving One Step in Place Stainless Steel Square Slot Cutter Stainless Quickly for Plastic Metal or Low-Voltage Electrical Boxes mounting Compatible

Visit the petnino Store

\*\*\*\*\* 31 ratings | 18 answered questions

Price: \$15.99

Color: Square

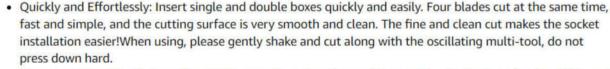






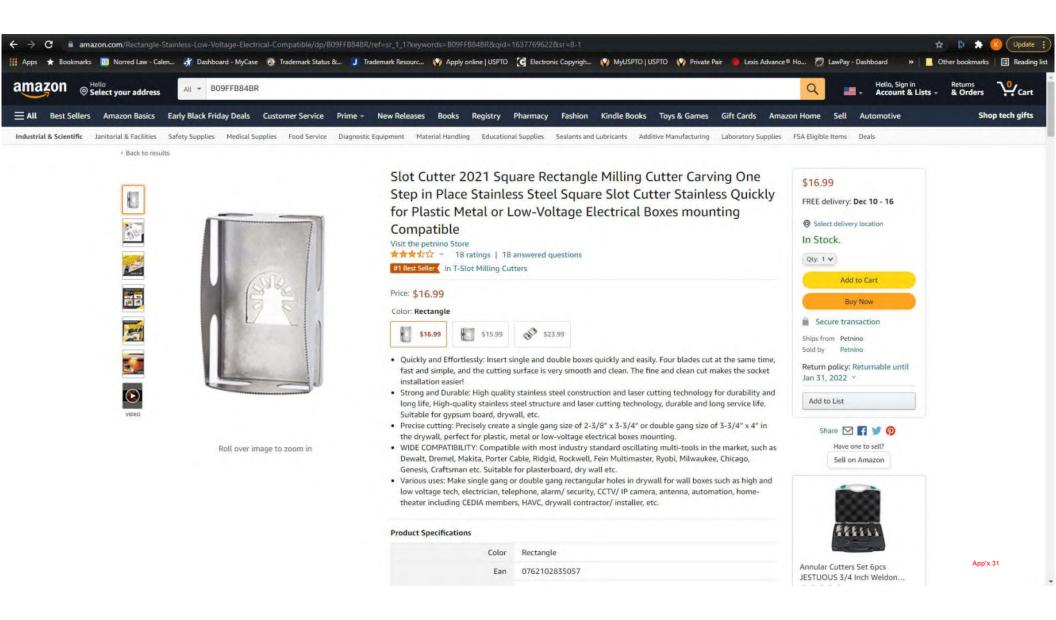


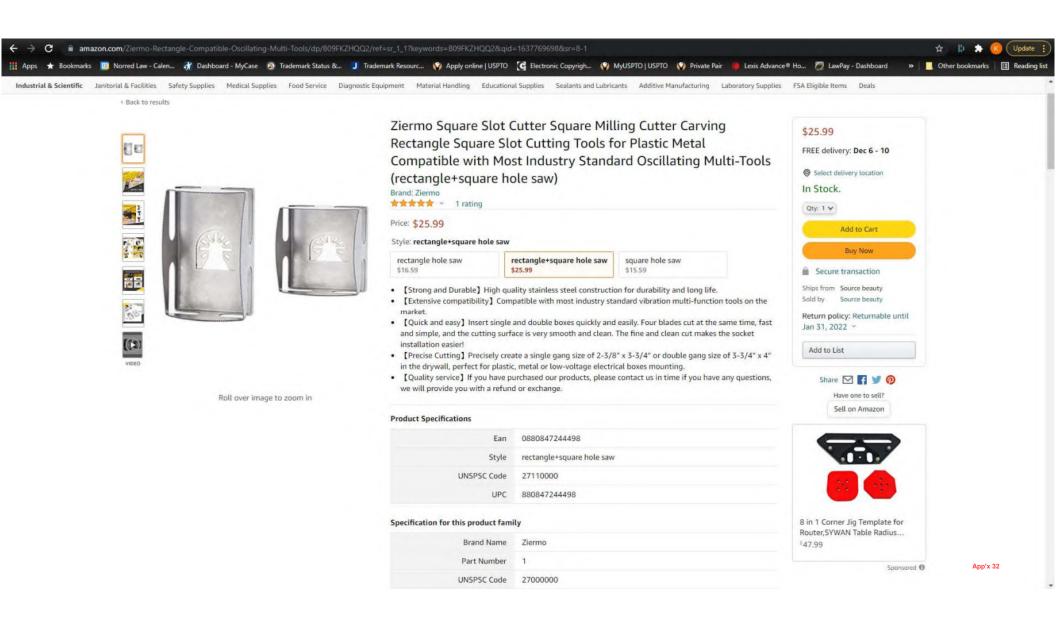
n a



 Strong and Durable: High quality stainless steel construction and laser cutting technology for durability and long life, High-quality stainless steel structure and laser cutting technology, durable and long service life.
 Suitable for gypsum board, drywall, etc.

Precise cutting: Precisely create a single gang size of 2-3/8" x 3-3/4" or double gang size of 3-3/4" x 4" in the drywall, perfect for plastic, metal or low-voltage electrical boxes mounting. (Note: The four corners of







Click image to open expanded view

Square Slot Cutter Rectangle Electric Box Cutter Single Gang Oscillating Drywall Outlet Cutout Stainless Steel Multi Tool Electrical Box Cutter with Textured Paper and Abrasive Paper (Black)

Visit the Zhehao Store

★★★☆☆ Y 1 rating

Price: \$21.99 (\$2.00 / Item) **/ Prime** & FREE Returns /

Get a \$150 Gift Card: Pay \$0.00 \$21.99 upon approval for the Amazon Prime Rewards Visa Card. No annual fee.

Material Stainless Steel, Paper

Brand Zhehao

Compatible Material Wood, Stainless Steel

### About this item

- Easy to use: this multi tool box cutter can quickly and easily cut into single-row and double-row boxes; You
  can just install the cutter on any major brand multi-tools directly and then use the white masking paper to
  cover the wall before cutting, protecting your wall from dirt or dust; After cutting, the abrasive paper helps
  to facilitate sanding the uneven cutting surface and edge to achieve a simple installation
- Precise cutting: with clean and fine sawtooth edges, the oscillating outlet installation tool is meticulously
  crafted and can accurately cut on the dry wall to help you install low-voltage distribution boxes, sockets,
  etc. in the correct position; You can also use white textured paper to make precise positioning in advance
- Sturdy stainless steel material: this electric box cutter is made of stainless steel with fine workmanship, wear-resistant, strong and not easy to break, smooth on the surface and edge, presenting a beautiful appearance, which can accompany you for a long time



Roll over image to zoom in











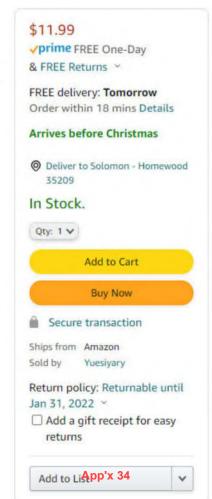




Stainless Steel Slot Cutter Quick Effortless Cut-in Single Double Gang Box Milling Cutter Carving One Step in Place Slot Cutter Universal Hole Opener Plasterboard Wall Slot Cutting Tool (Rectangle)



- you cut the wall at the same time and get the hole in one step, fast and simple, and the cutting surface is smooth and tidy, fine and clean cutting makes the socket installation easier
- Stainless steel material: the stainless steel slot cutter is made of stainless steel with laser cutting technology makes the slot cutter wears resistant safe.





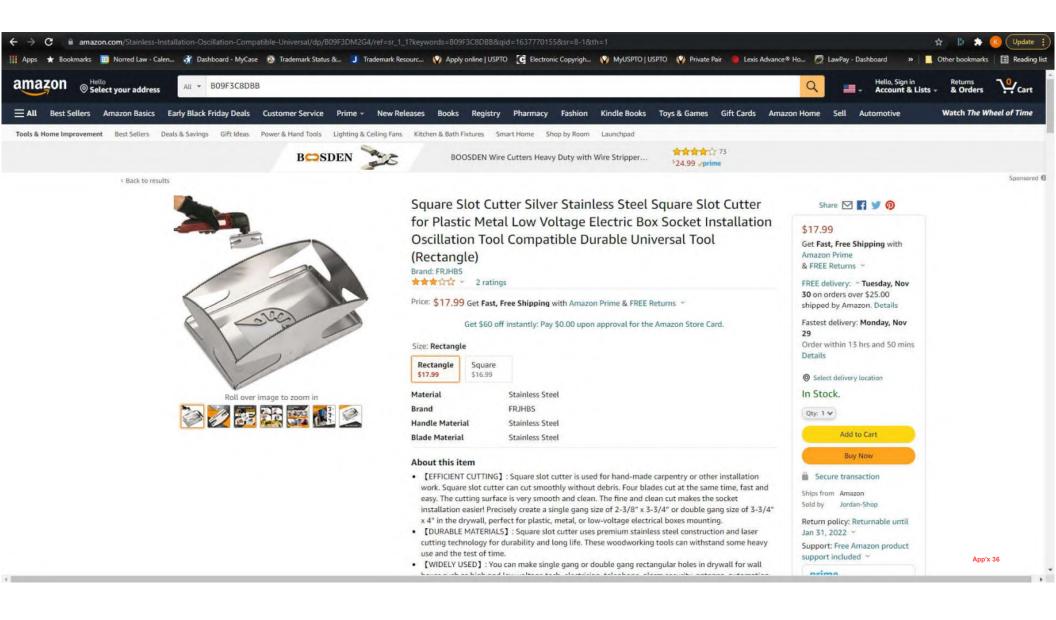
Stainless Steel Slot Cutter Quick Effortless Cut-in Single Double Gang Box Milling Cutter Carving One Step in Place Slot Cutter Universal Hole Opener Plasterboard Wall Slot Cutting Tool (Square)



- Efficient tool: slot cutter is a tool that works efficiently, with four blades, let you cut the wall at the same time and get the hole in one step, fast and simple, and the cutting surface is smooth and tidy, fine and clean cutting makes the socket installation easier
- Stainless steel material: the stainless steel slot cutter is made of stainless steel, with laser cutting technology, makes the slot cutter wears resistant, safe

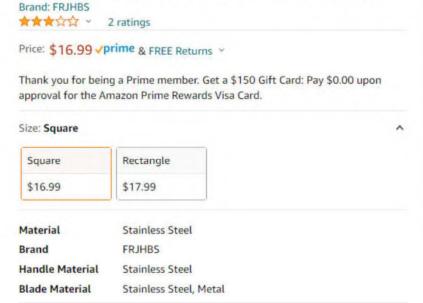








Square Slot Cutter Silver Stainless Steel Square Slot Cutter for Plastic Metal Low Voltage Electric Box Socket Installation Oscillation Tool Compatible Durable Universal Tool (Square)

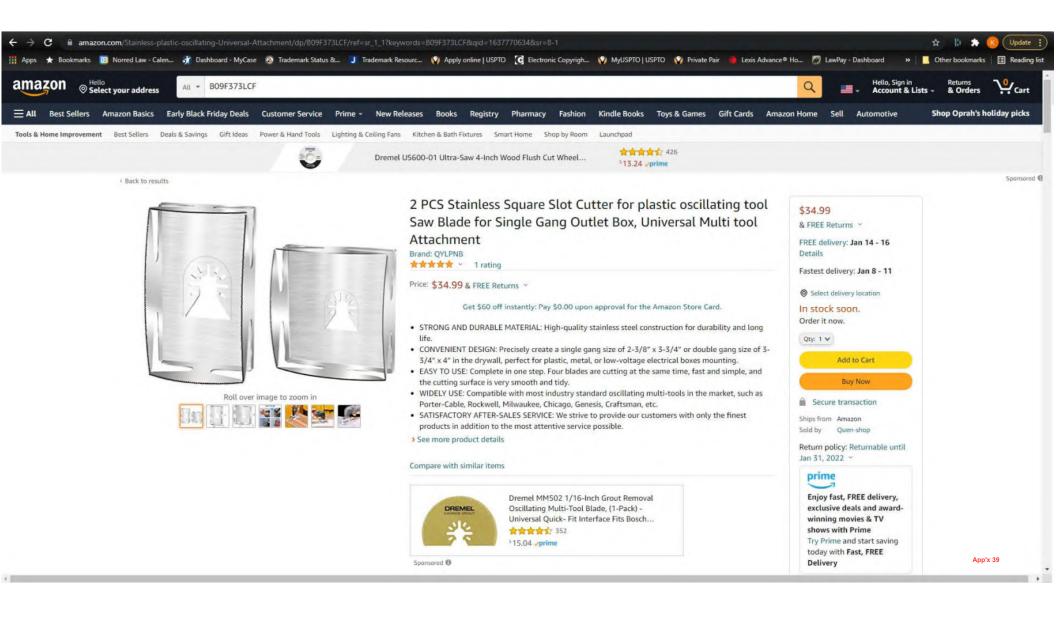


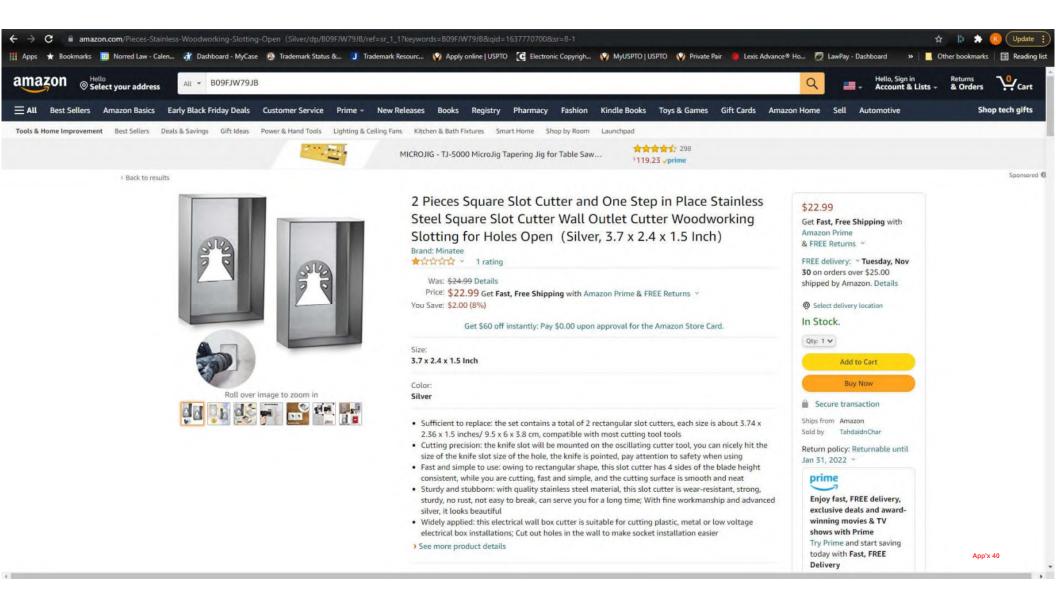
## About this item

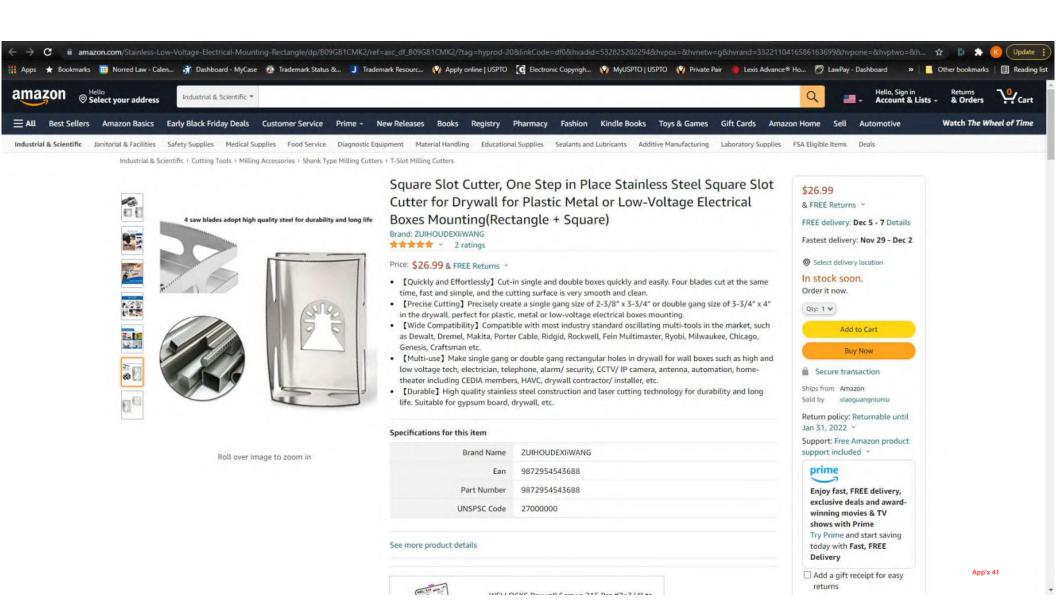
[EFFICIENT CUTTING]: Square slot cutter is used for hand-made carpentry
or other installation work. Square slot cutter can cut smoothly without debris.
Four blades cut at the same time, fast and easy. The cutting surface is very
smooth and clean. The fine and clean cut makes the socket installation easier!
Precisely create a single gang size of 2-3/8" x 3-3/4" or double gang size of 3-















Click image to open expanded view















One Step in Place Stainless Square Slot Cutter Oscillating Multi Tool Saw Blade Universal Fit For Most Oscillating Multi-Tools (Rectangle + Square)

Brand: LIANGJIAN

★★☆☆ ~ 3 ratings

Lowest price in 30 days

Was: \$26.99 Details

Price: \$23.99 Prime FREE Delivery & FREE Returns ~

You Save: \$3.00 (11%)

Get a \$150 Gift Card: Pay \$0.00 \$23.99 upon approval for the Amazon Prime Rewards Visa Card. No annual fee.

Material Stainless Steel Brand LIANGJIAN Stainless Steel Compatible

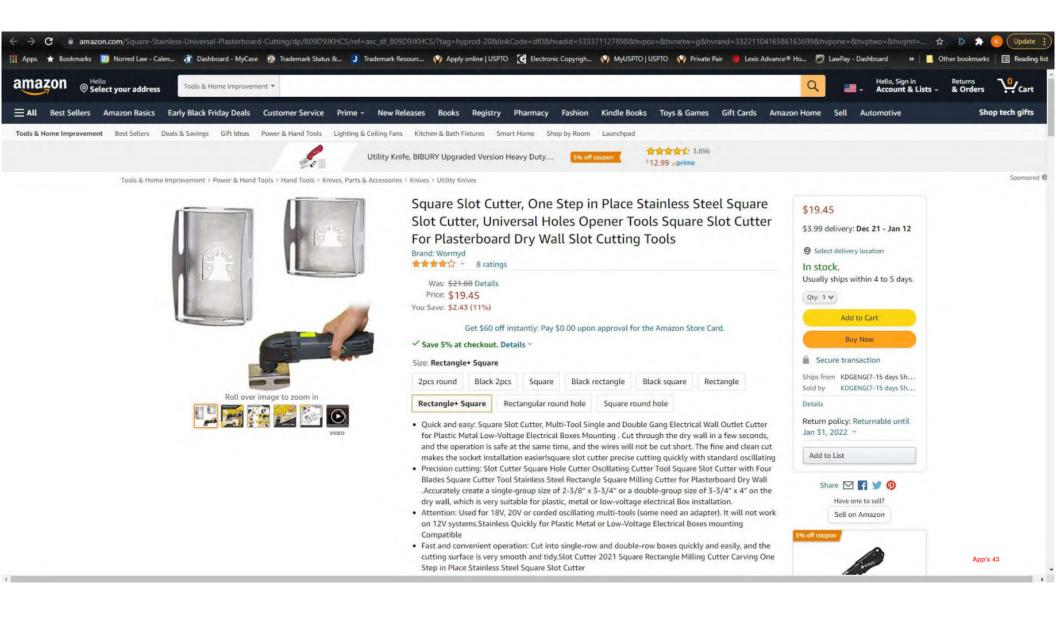
Material

## About this item

- . [Quickly and Effortlessly] Cut-in single and double gang boxes quickly and effortlessly. Four blades are cutting at the same time, fast and simple, and the cutting surface is very smooth and tidy. High quality stainless steel construction for durability and long life.
- [Precise Cutting] Size: Square:3.93x3.74x1.5in, Rectangle: 3.74x2.36x1.5in.Precisely create a single gang size in the drywall, perfect for plastic, metal or low-voltage electrical boxes mounting. Fine and clean cutting makes the socket installation easier.
- . [High Efficiency and Safe Tool] Tongue and groove set are using for hand



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×

Code: BLACK5





Home / Zezzo® Square Slot Cutter



## DESCRIPTION

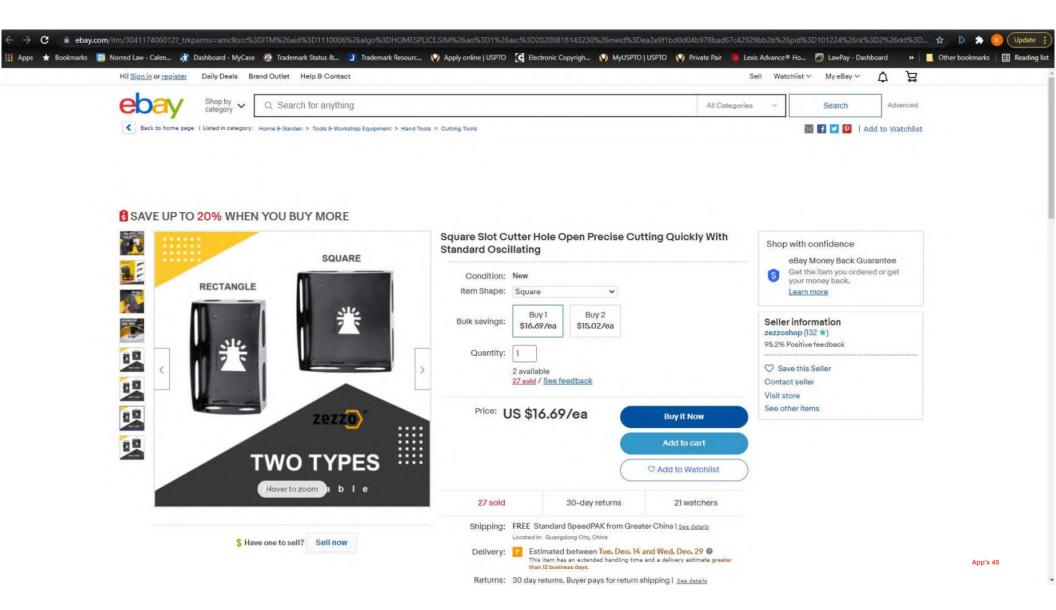
Ending the inefficient and cumbersome slot cutting tools!

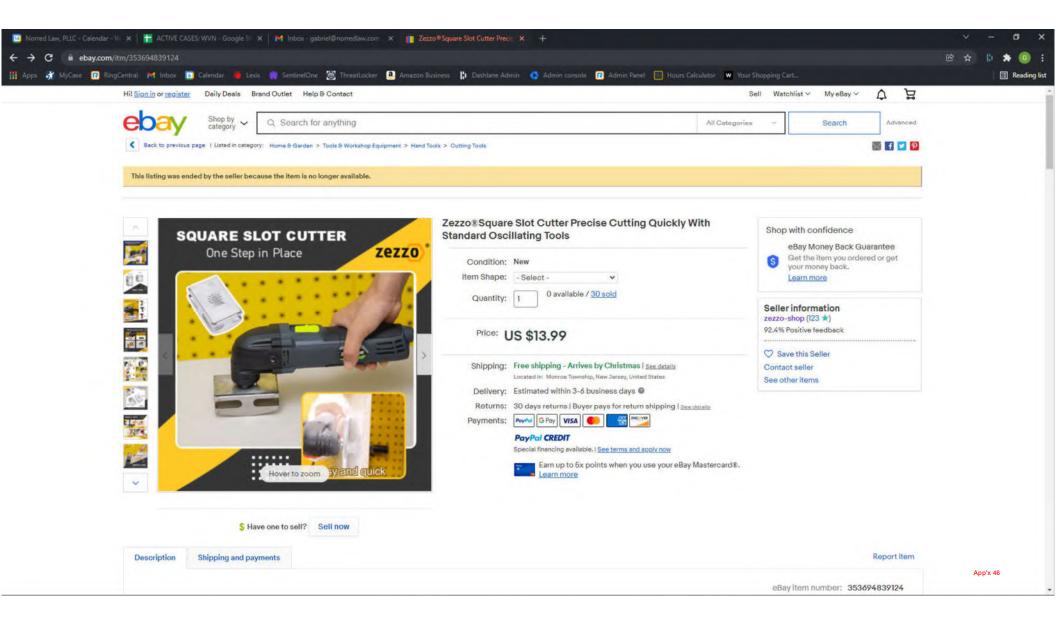
Cutting the electric box in seconds!

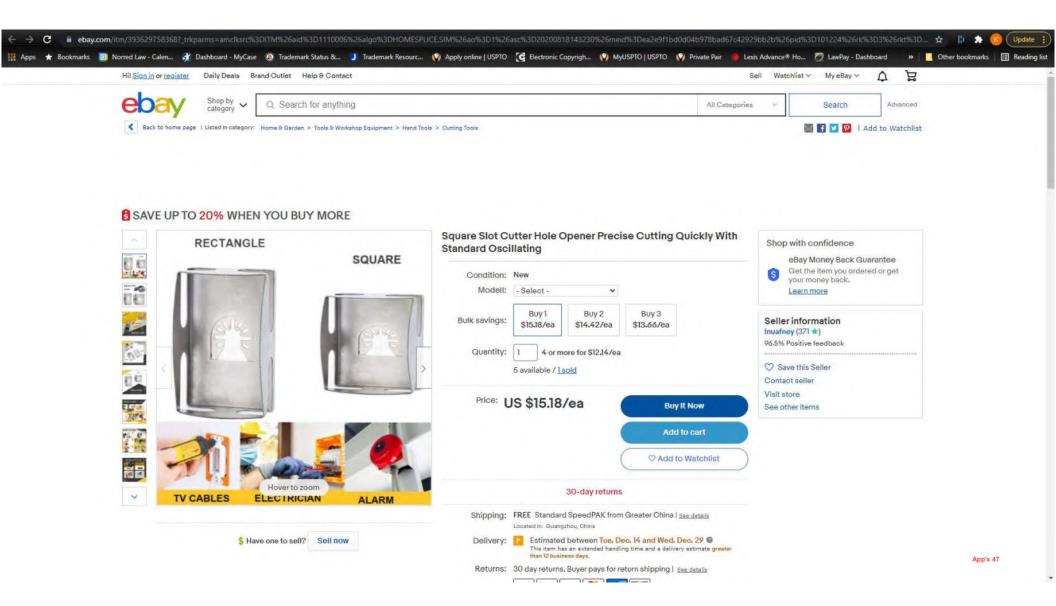


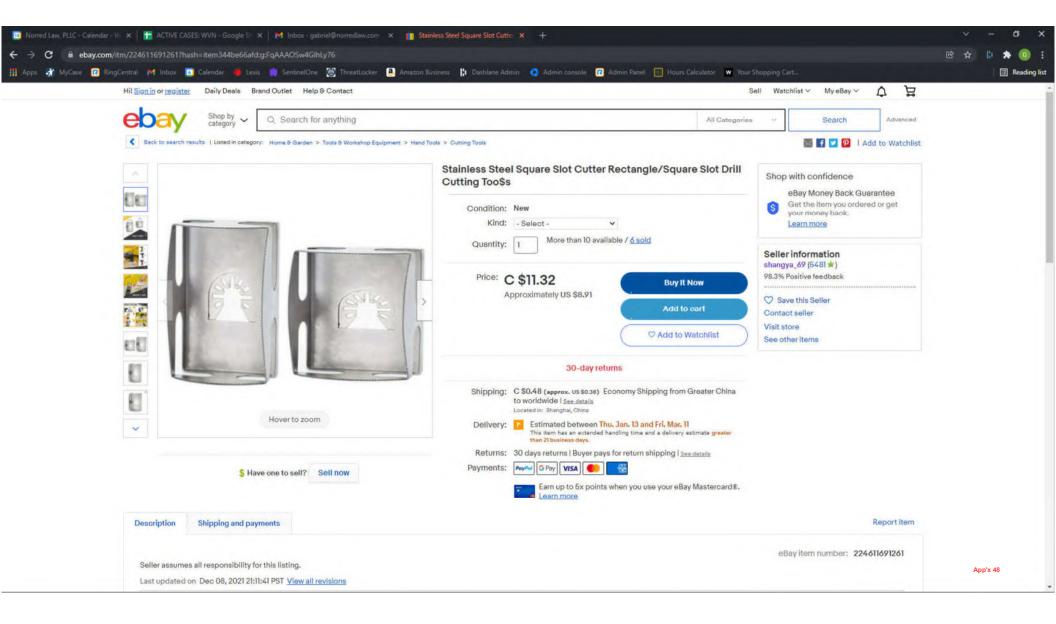
clean and tidy socket slots with Zezzo® Square Slot Cuttertiii
√One step in place
√No need to cut repeatedly
√Smooth cutting surfaces

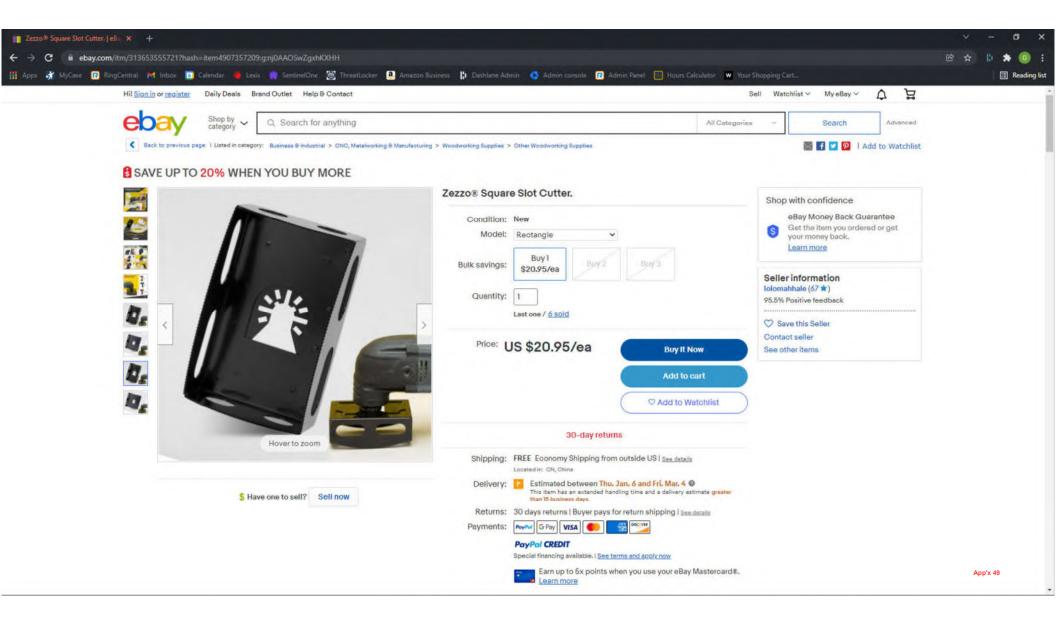
Greatly improving working efficiency and quality

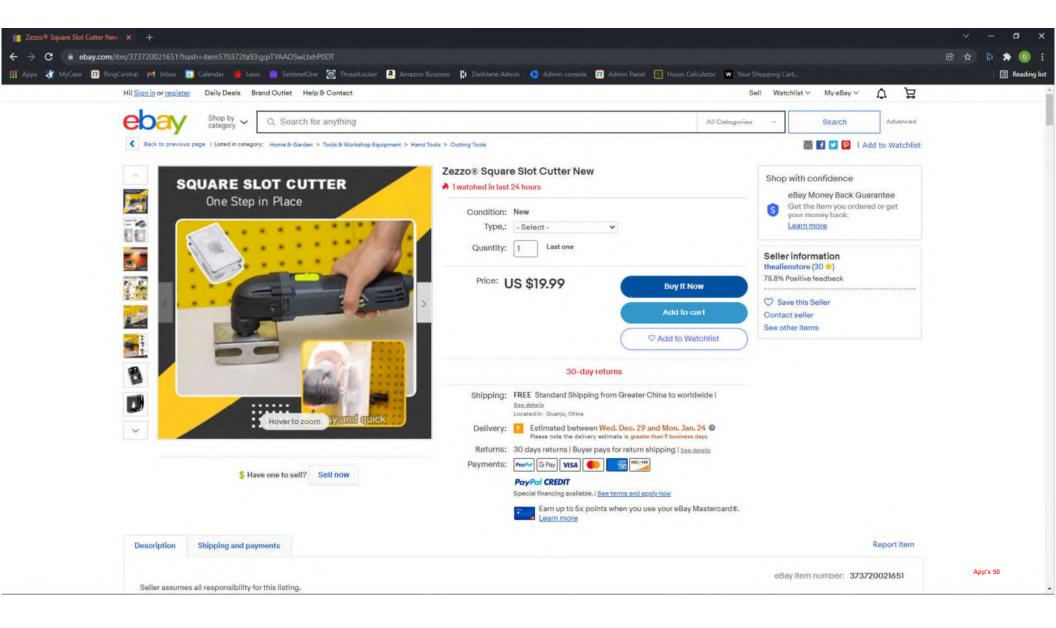


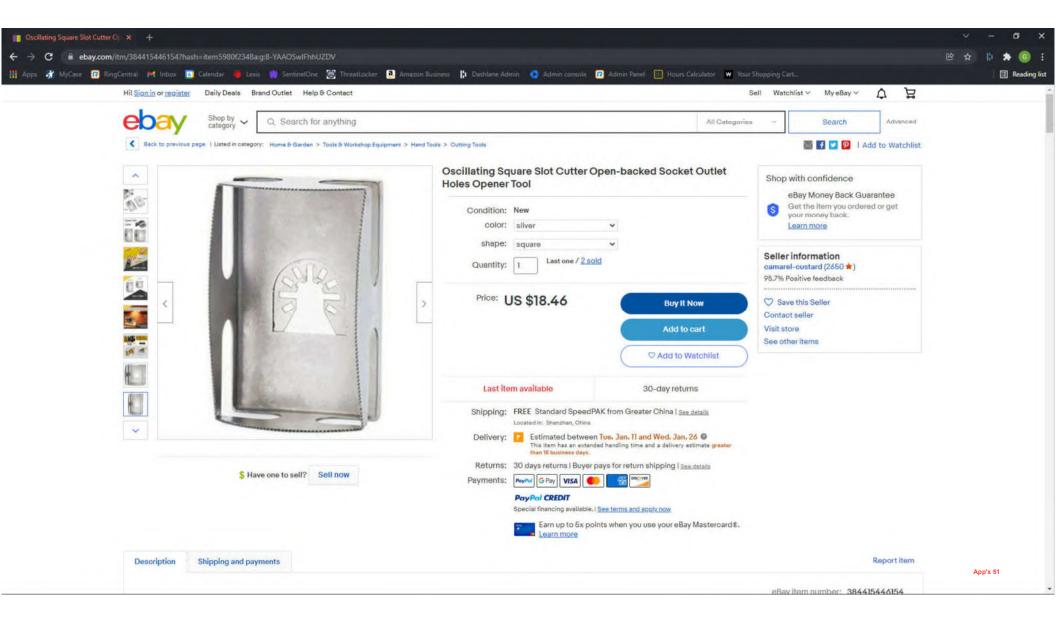


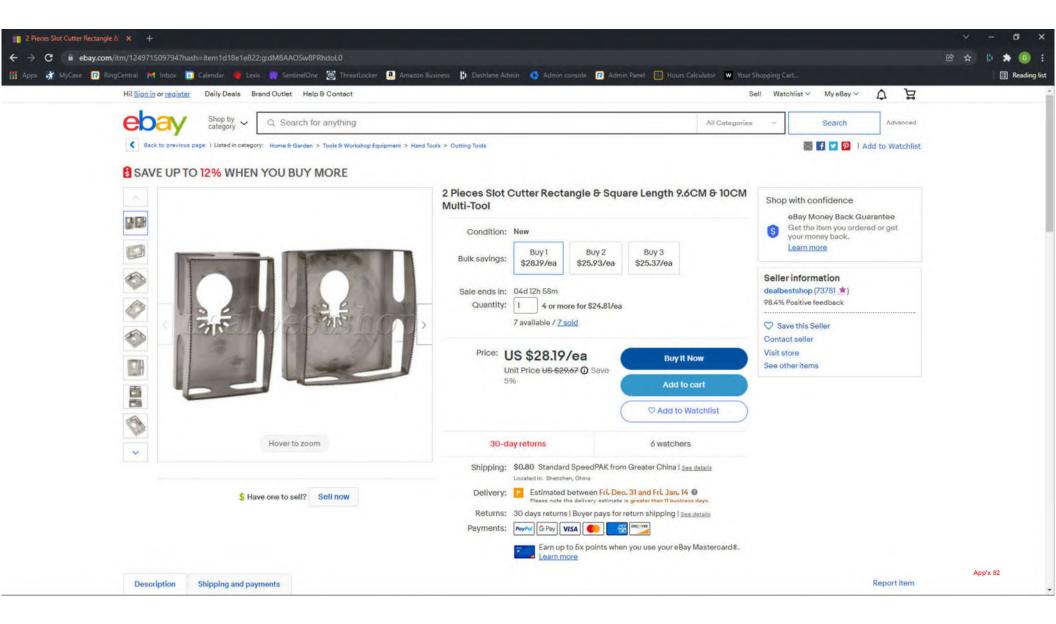


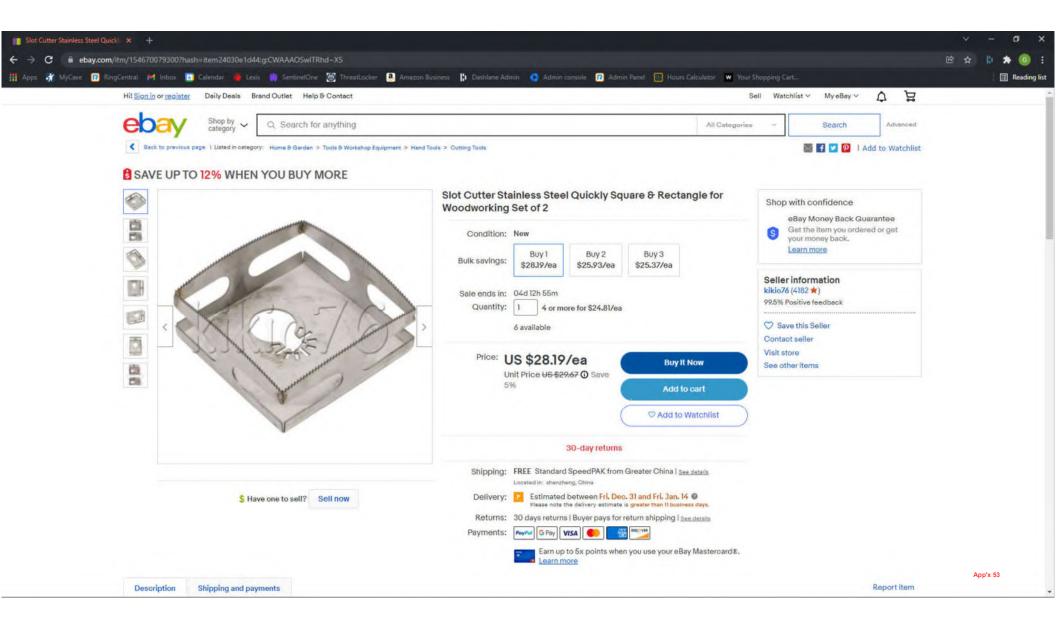


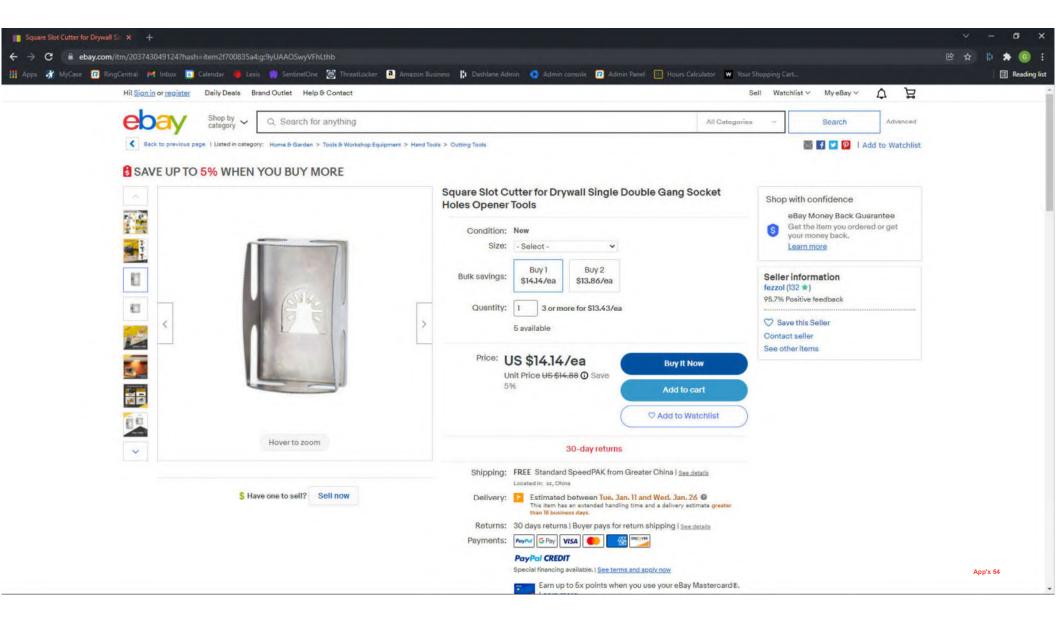


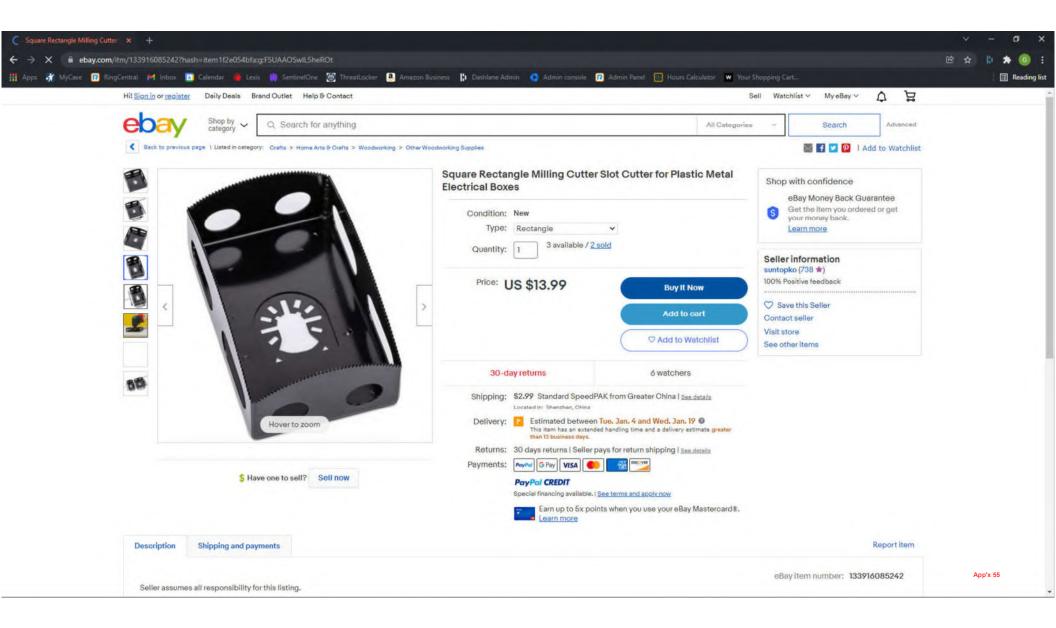


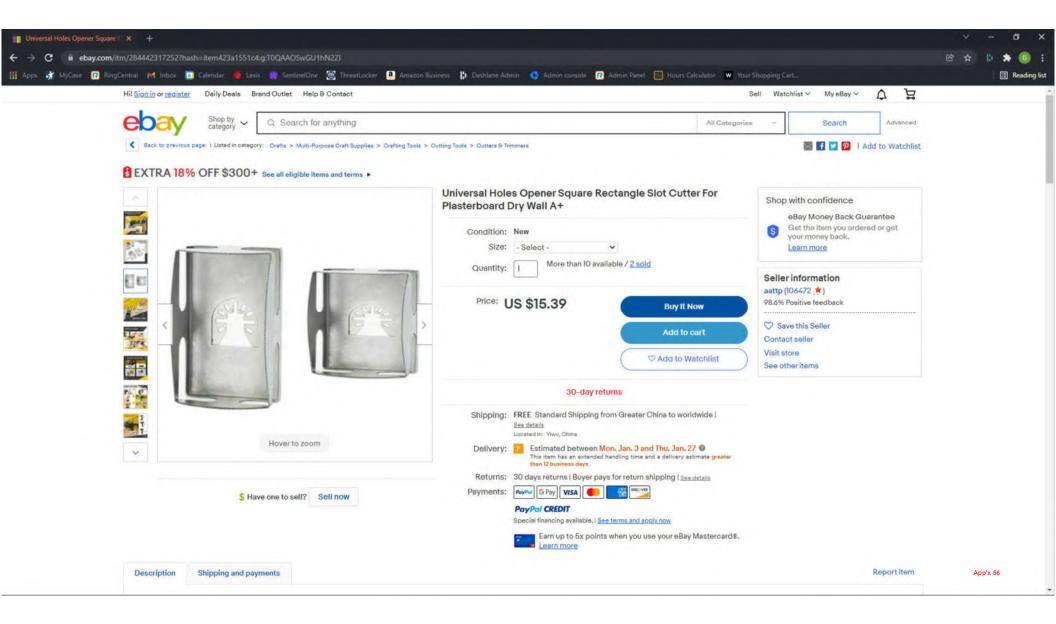


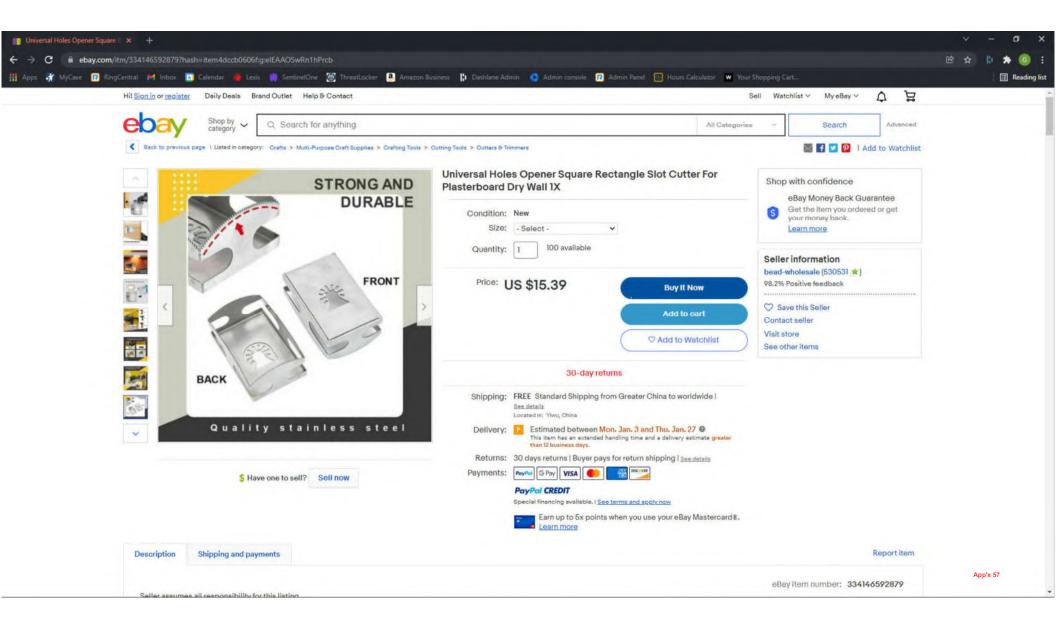


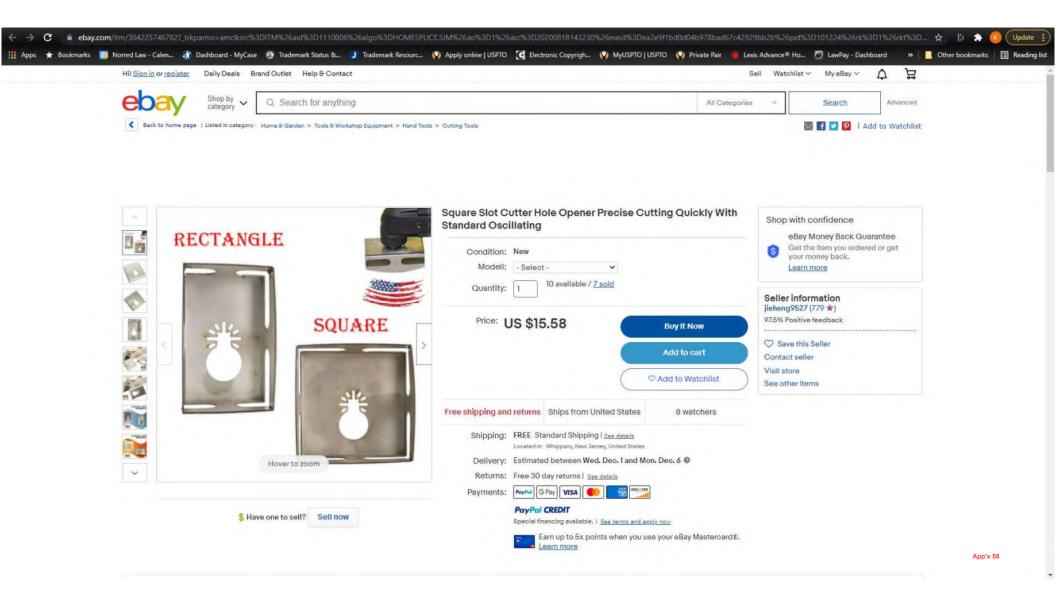


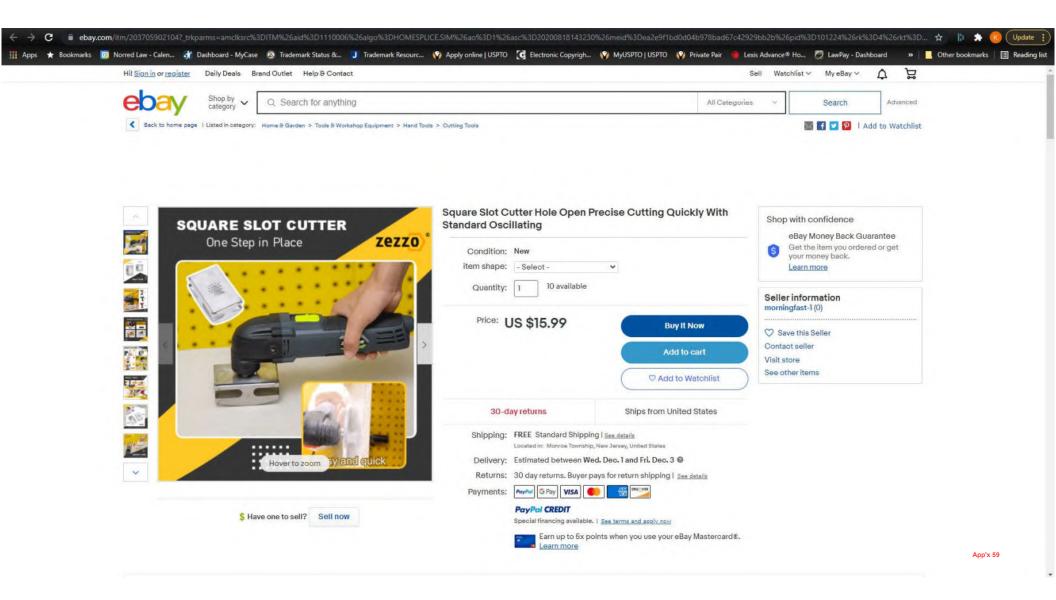


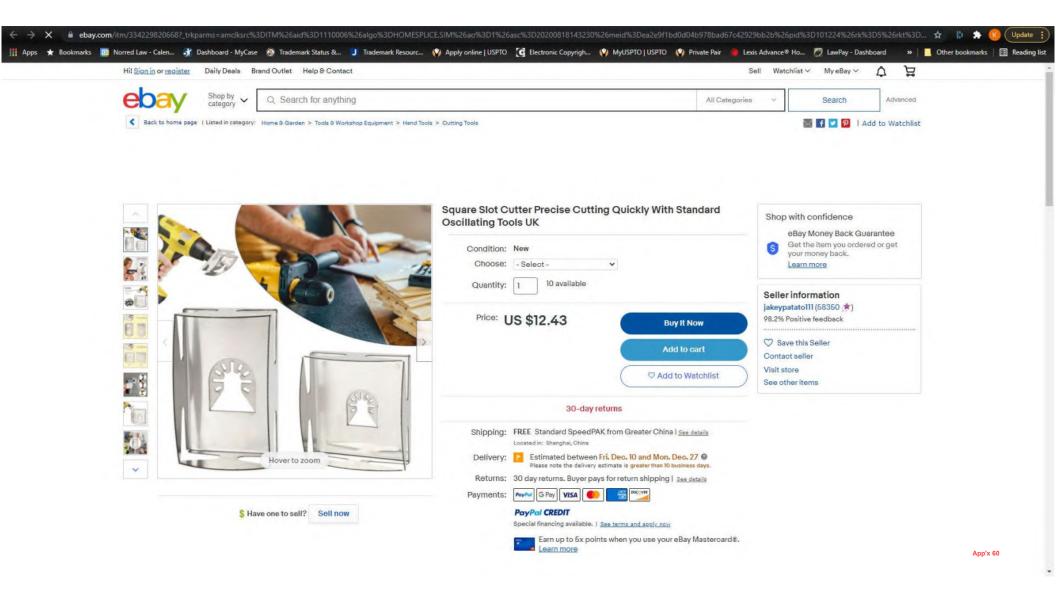


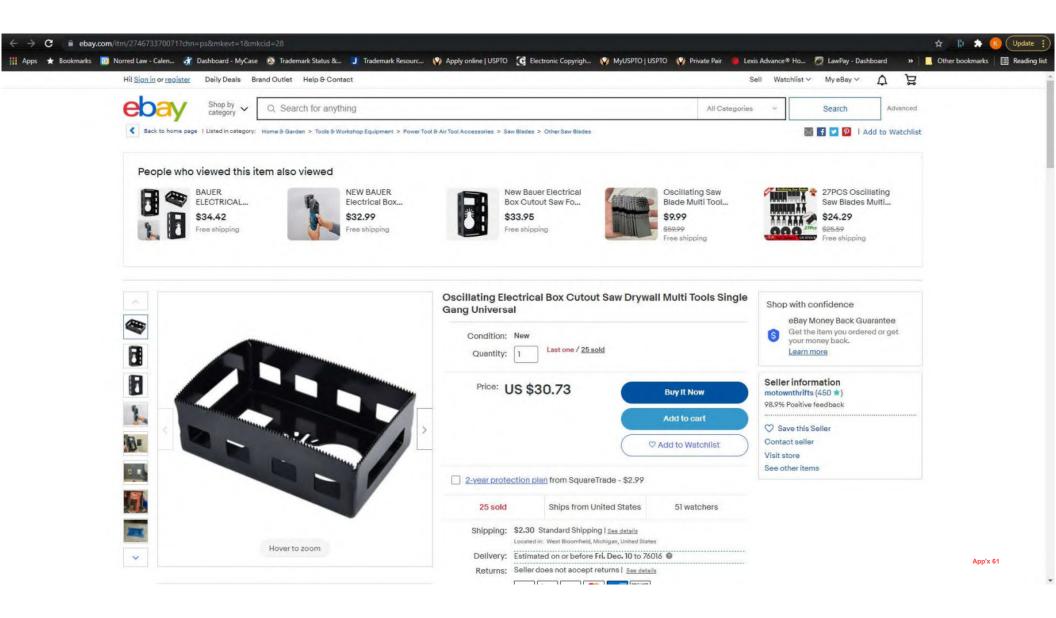


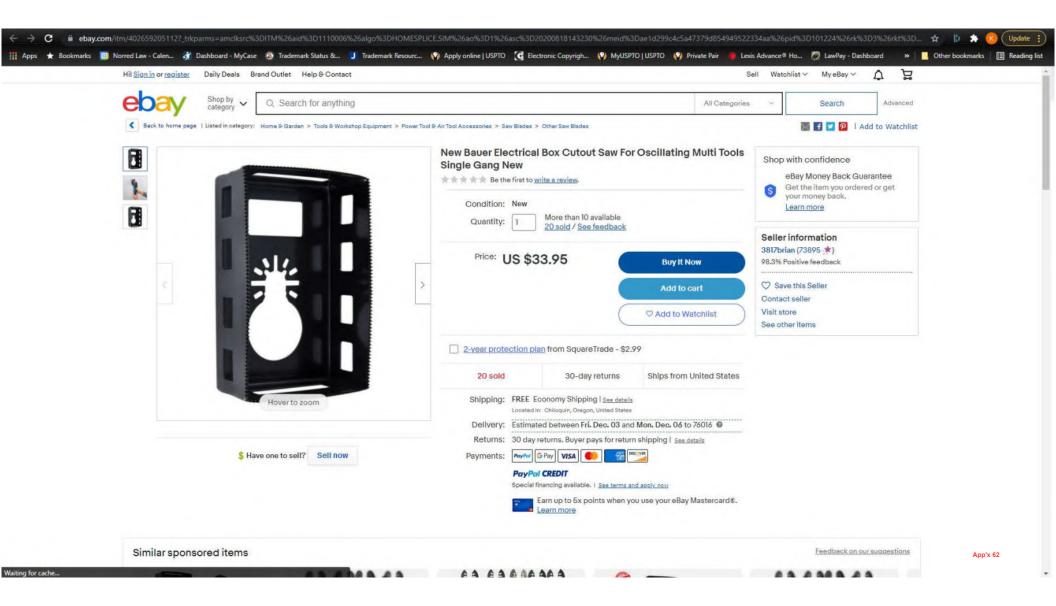


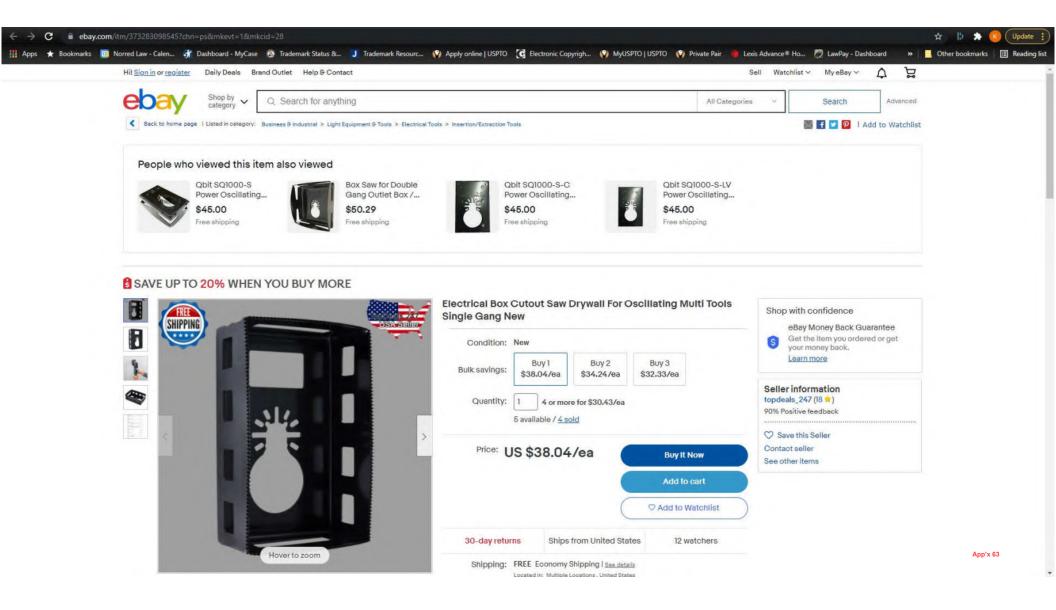


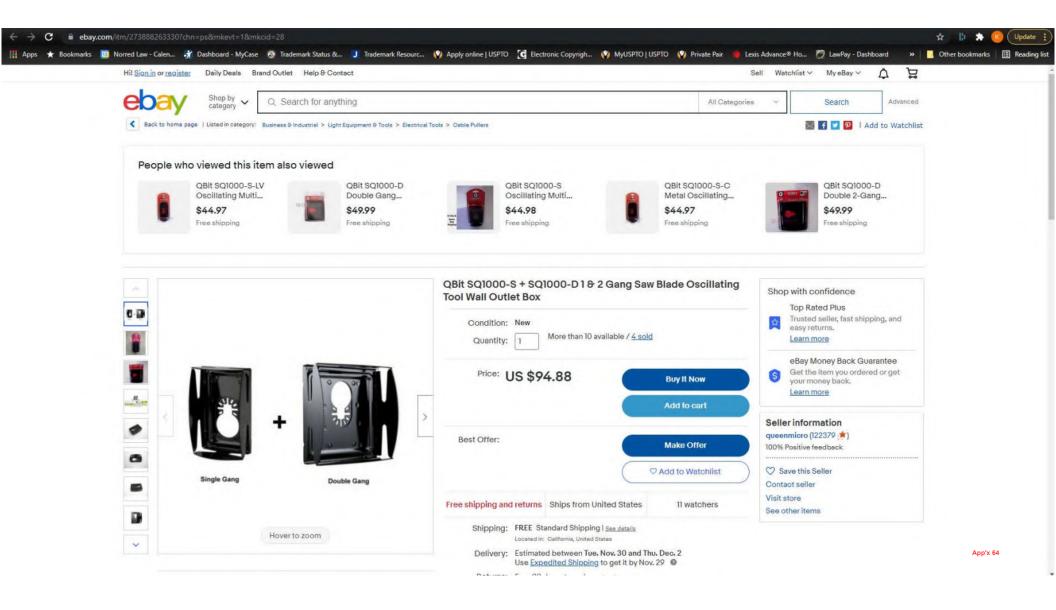


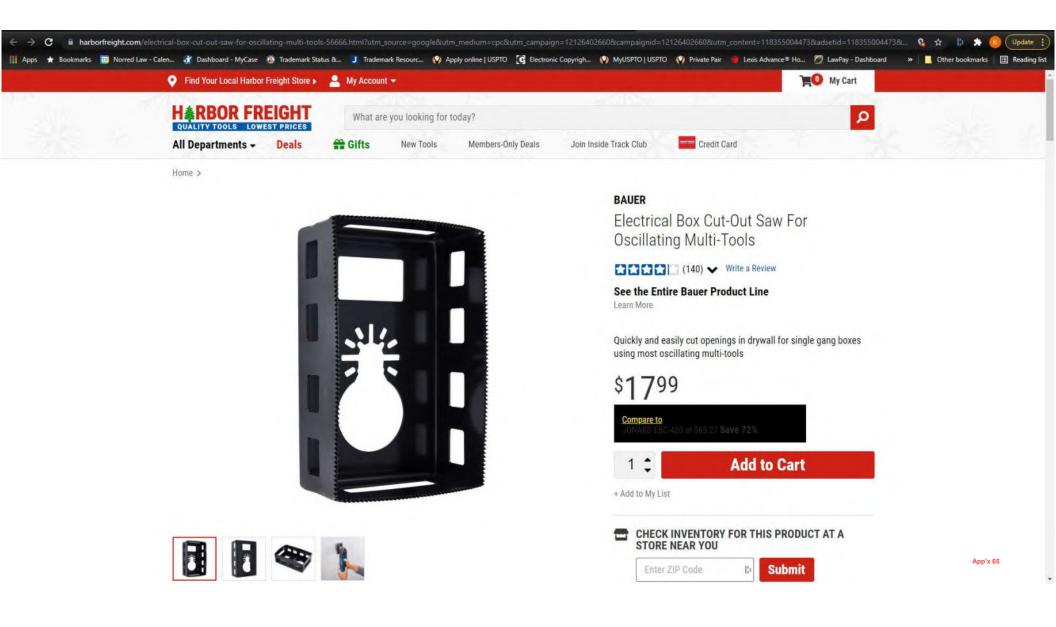


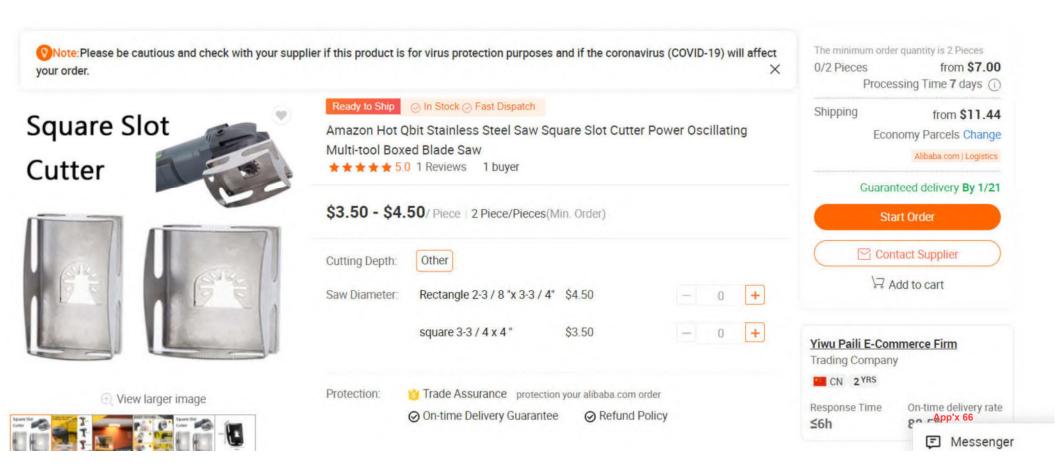


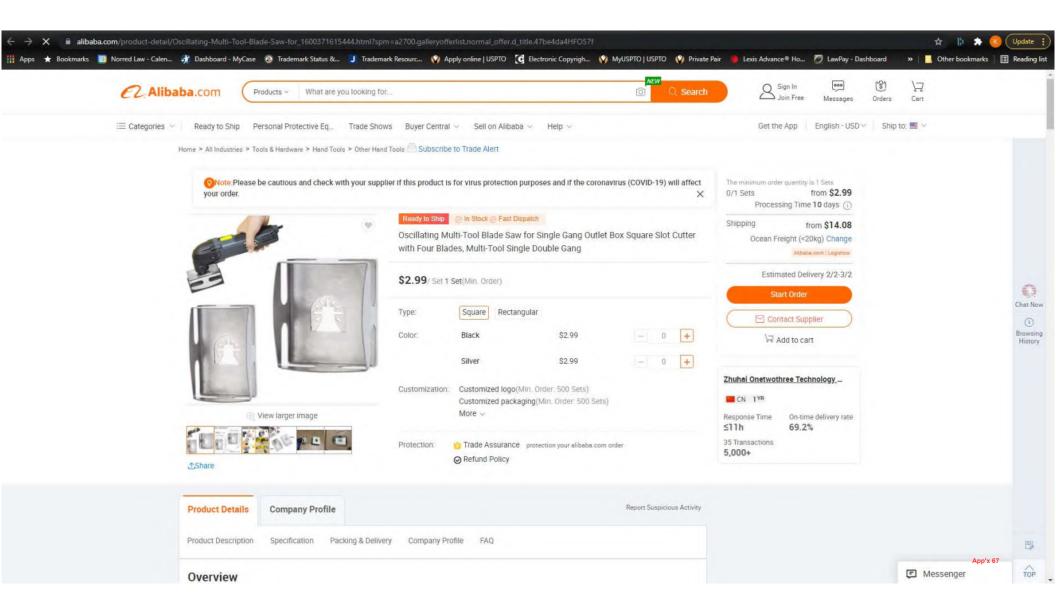


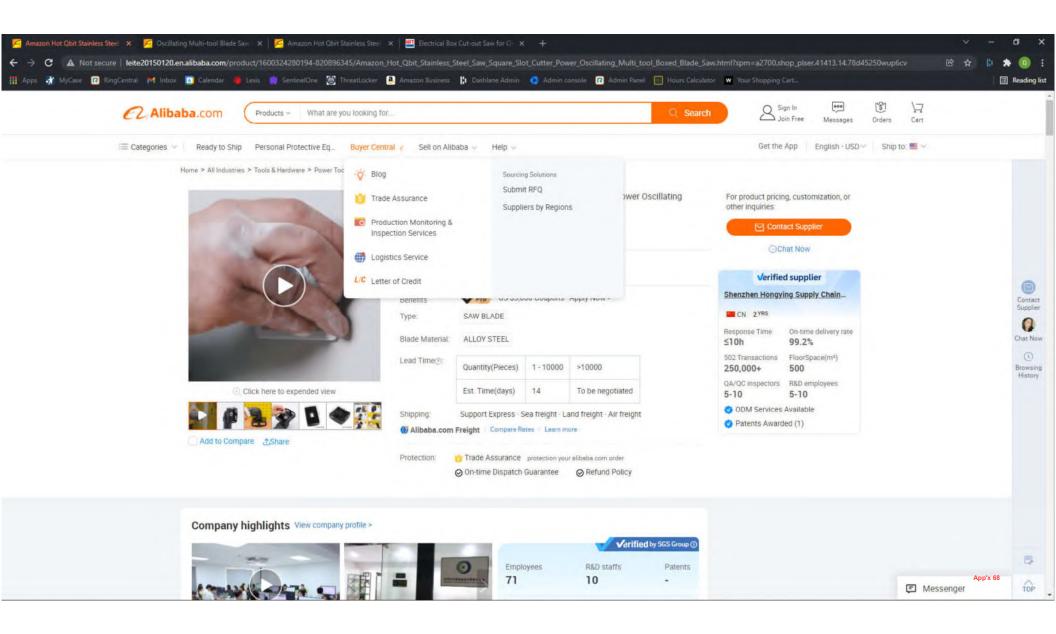


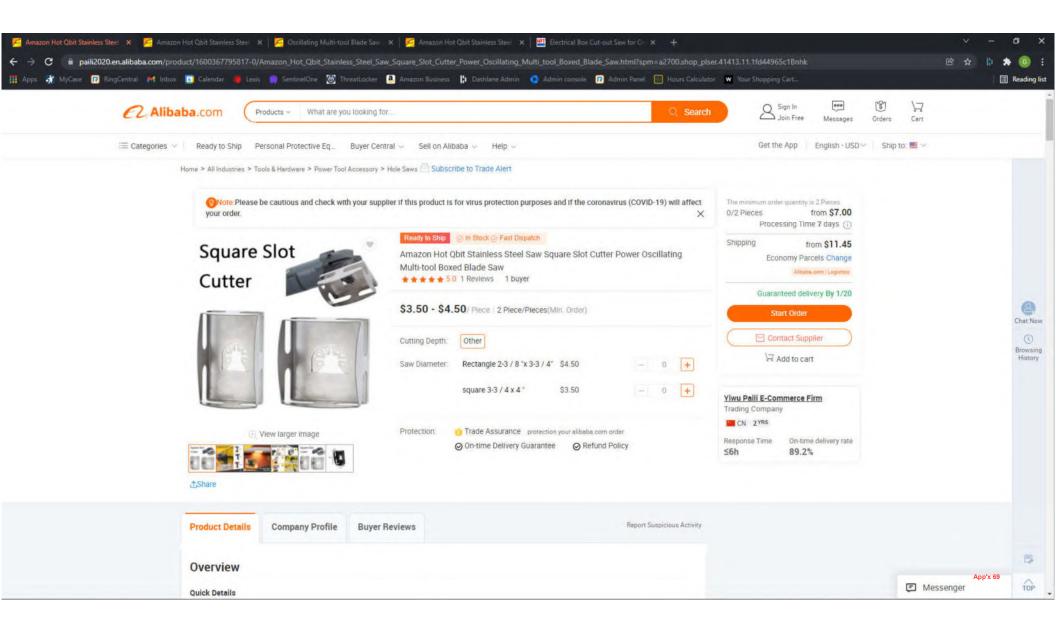


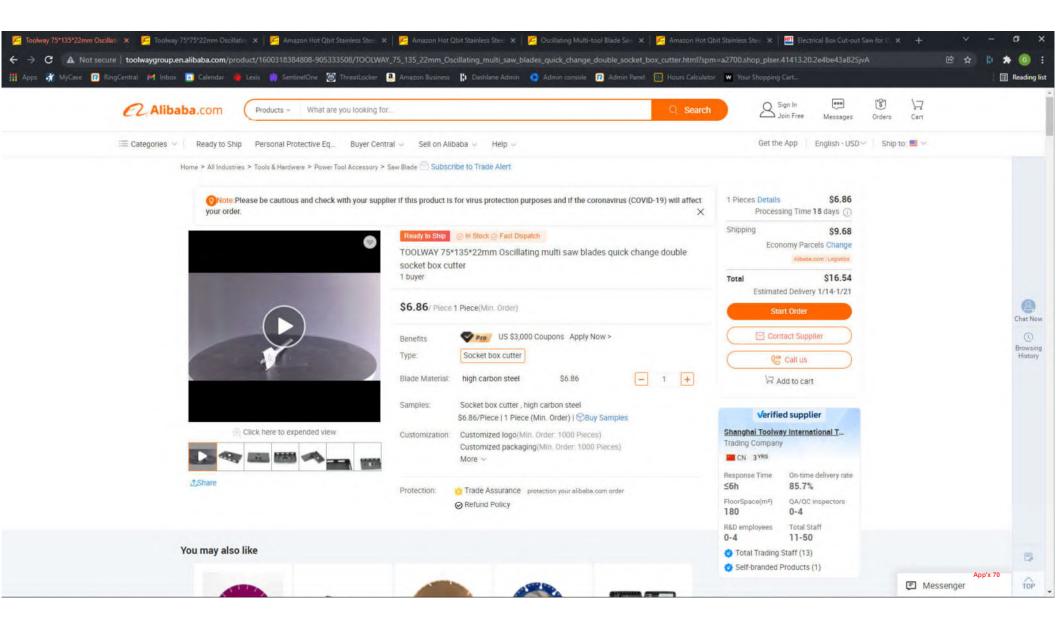


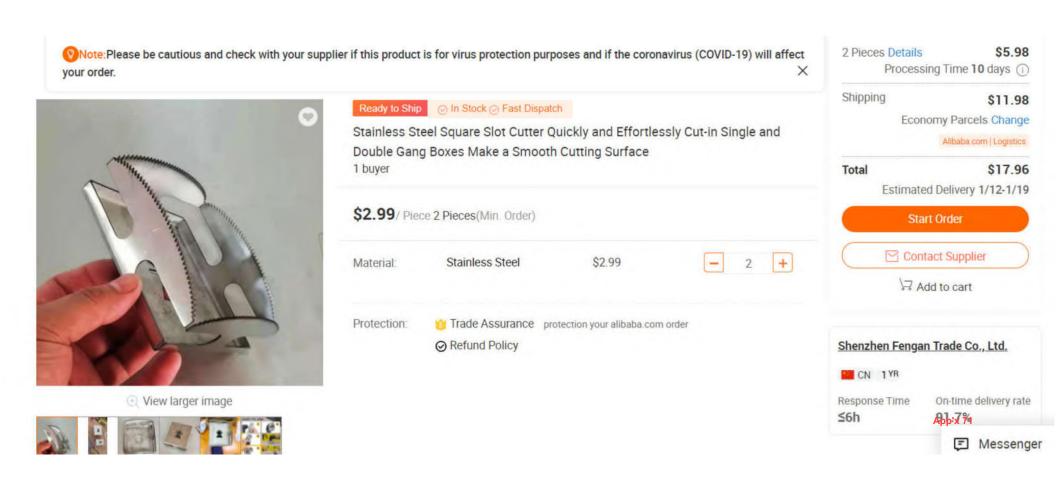


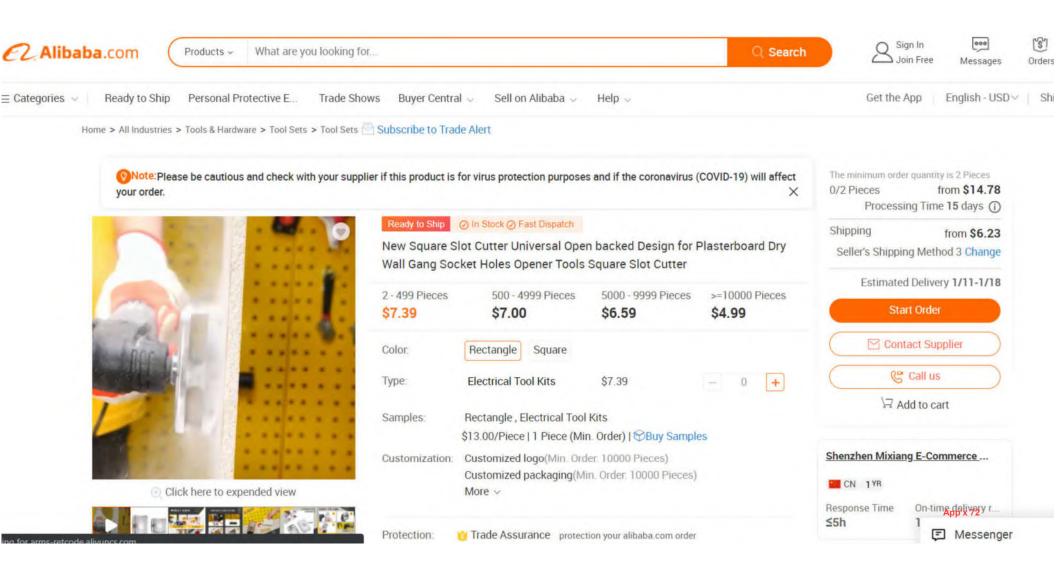


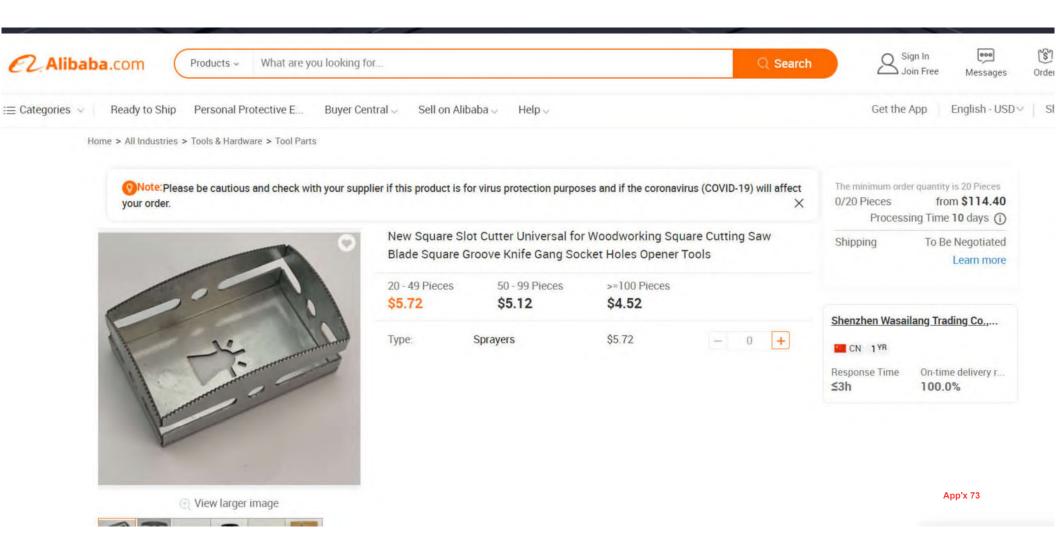


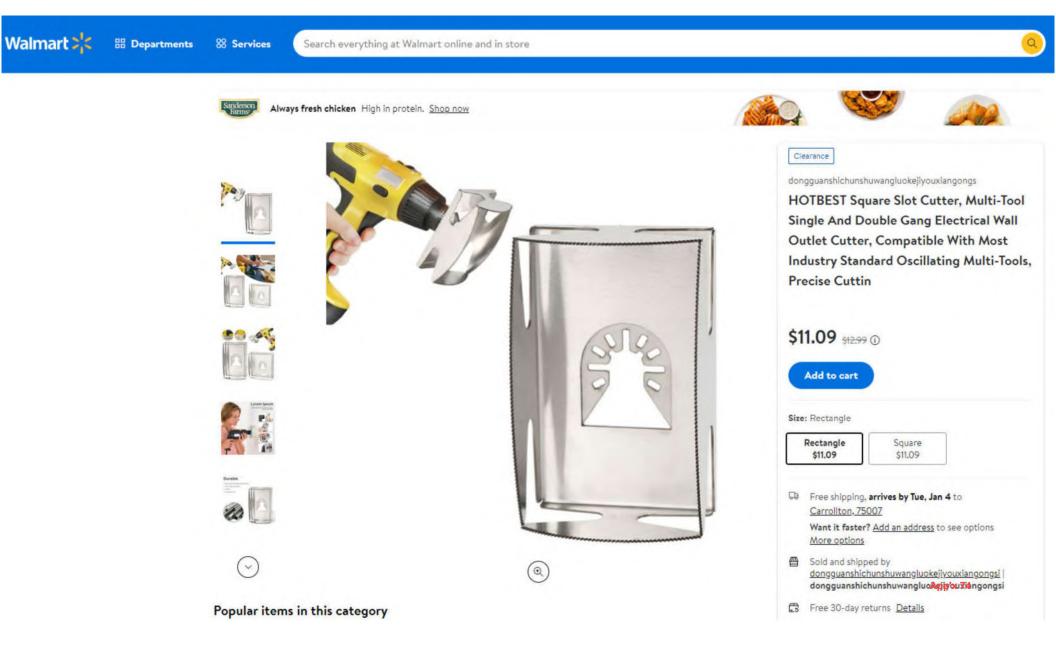


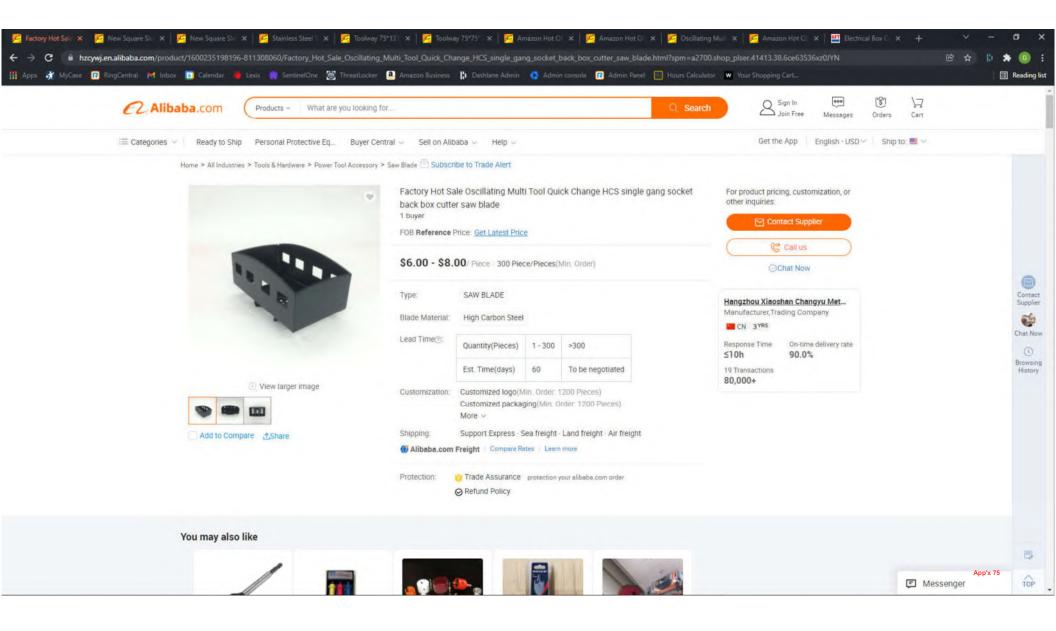














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MEGAWHEELS Square Slot Cutter **Multifunction Widely Used Precise Cutting Tool** 

\$16.28

Mega Wheels

Add to cart

Size: rectangle

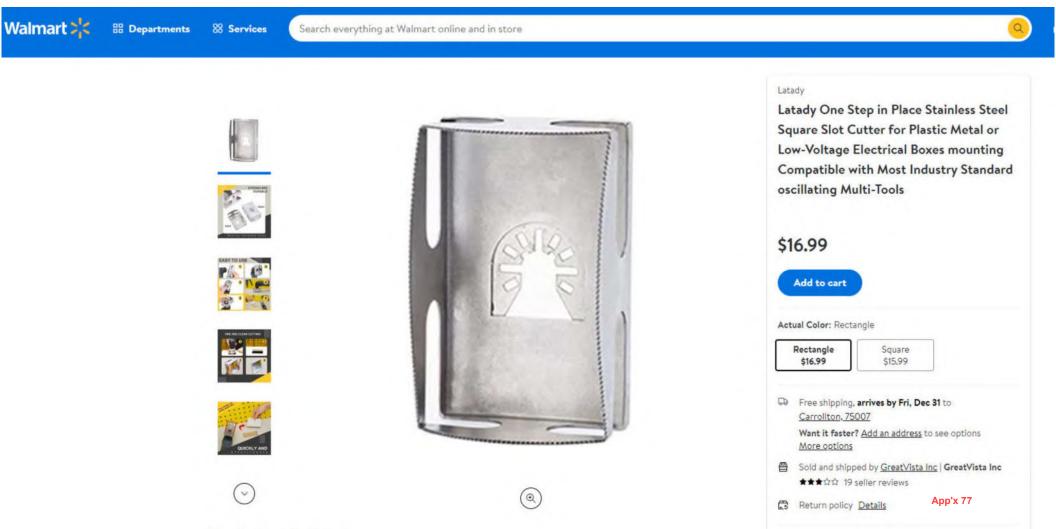




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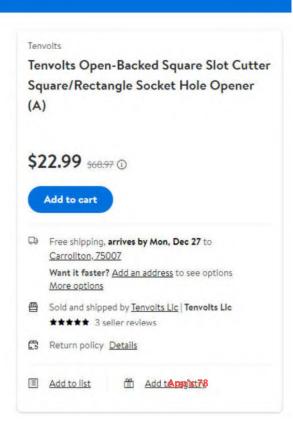
88 Services

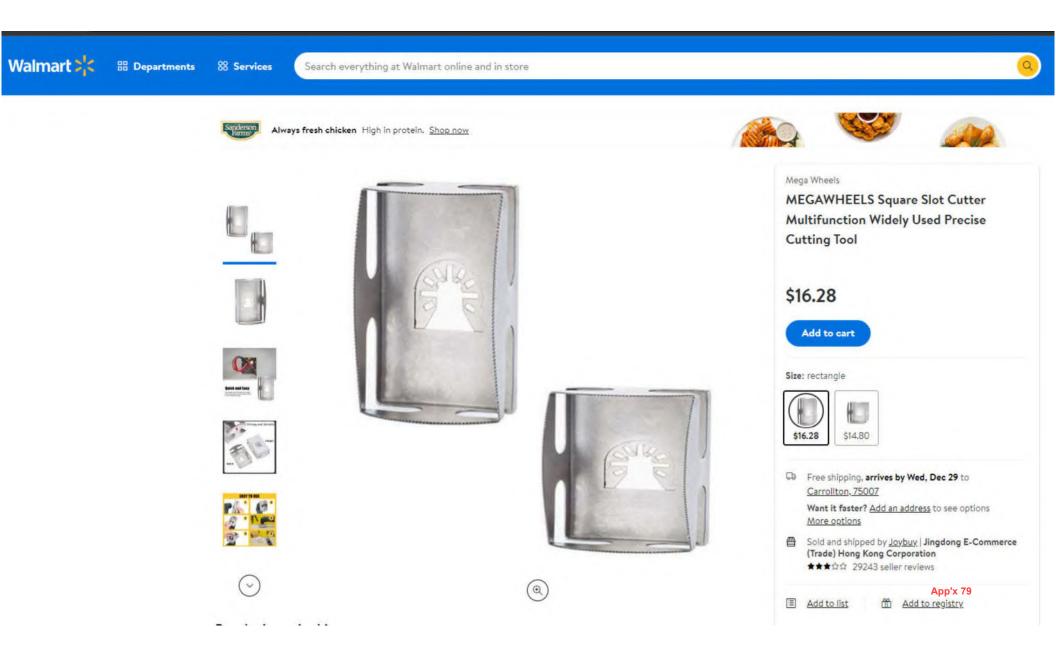
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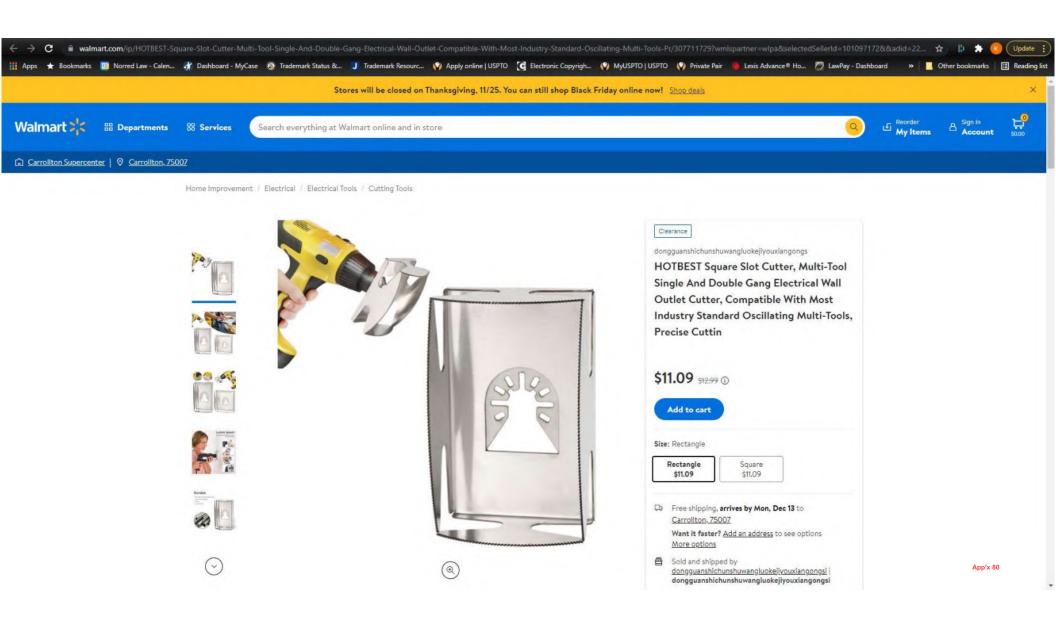














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Shape: Square

Rectangle
\$15.88

Square
\$19.11

Square
\$15.88

Square
\$19.11

Square
\$15.88

Square
\$19.11

Sold and shipped by Happy shopping

Return policy Details

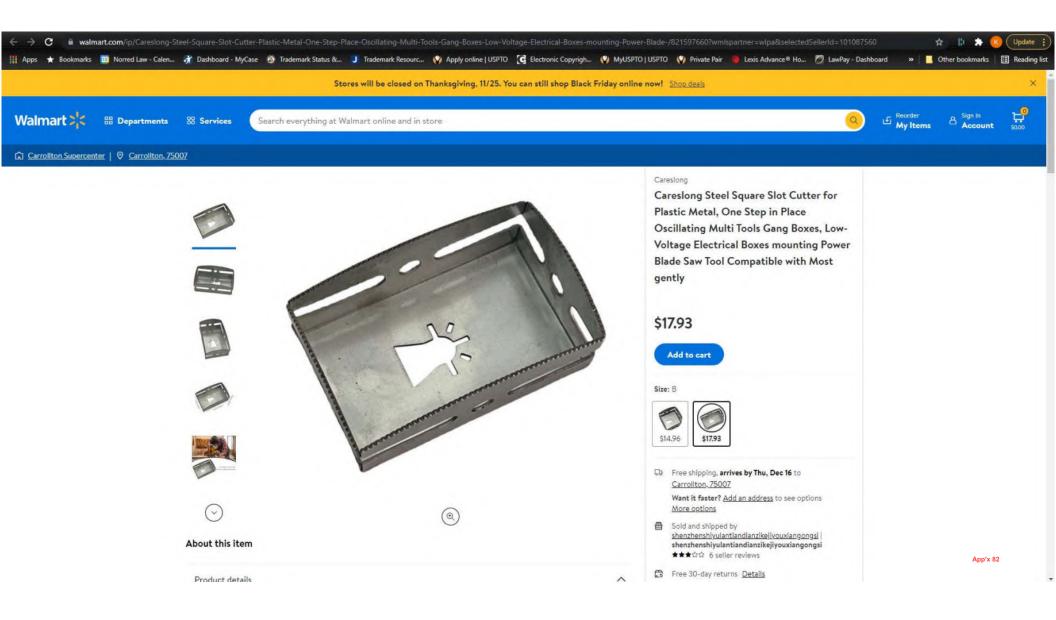
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DongGuanShiNuoLinDianZiShangWuYouXianGongSi

Machine Tool Accessories And Tools Milling Cutter Rectangular High Quality

Nuolin







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Careslong Square Slot Cutter Multifunction Widely Used Precise Cutting Tool

\$18.87

Add to cart

Actual Color: rectangle



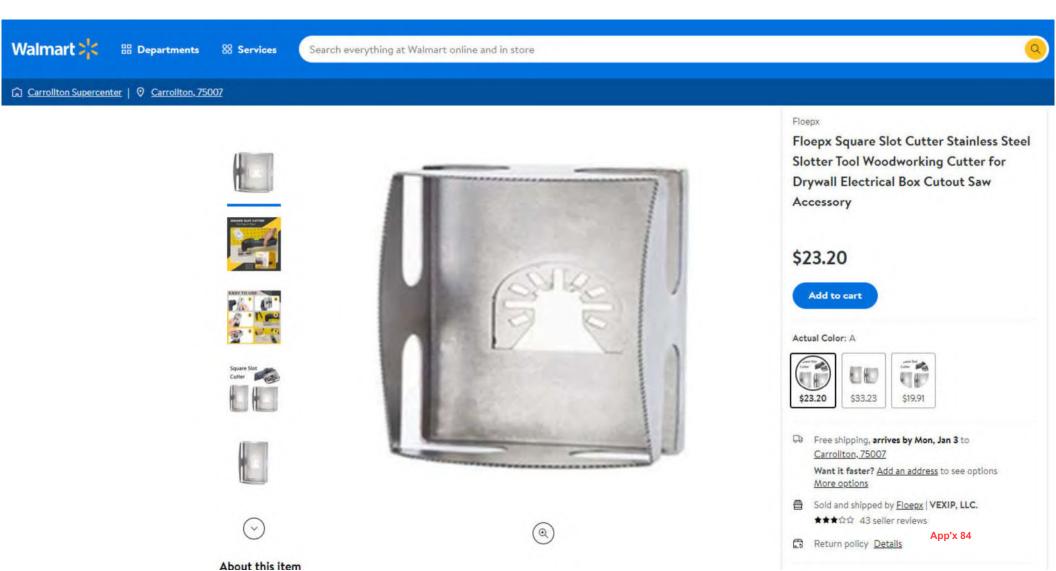


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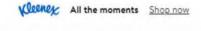
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Follure Clothing

Follure Square Slot Cutter without Repairing Rectangular Cutting and Milling Cutter Tools

\$18.89

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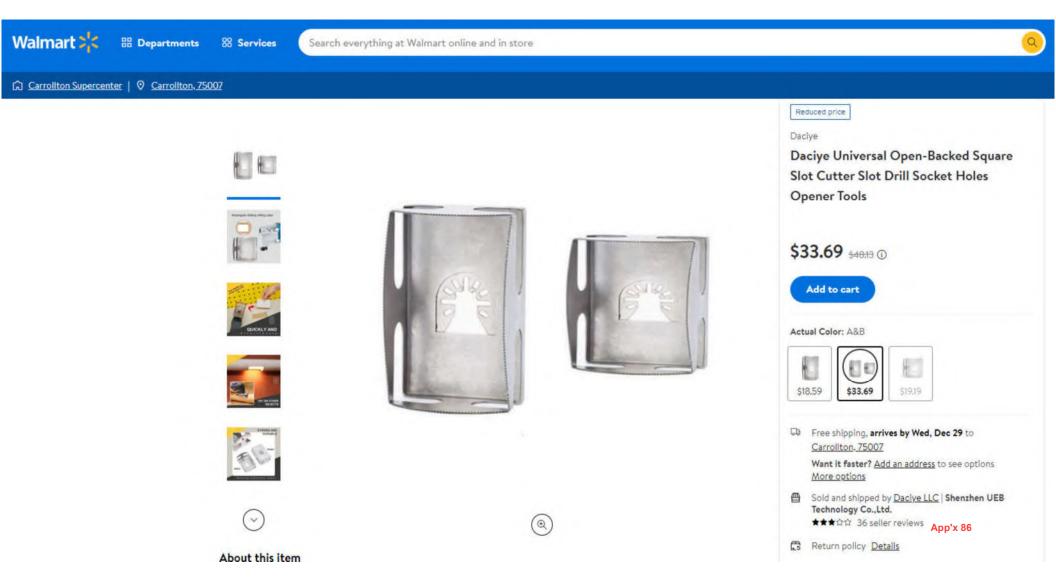
Sold and shipped by <u>Joybuy</u> | Jingdong E-Commerce (Trade) Hong Kong Corporation

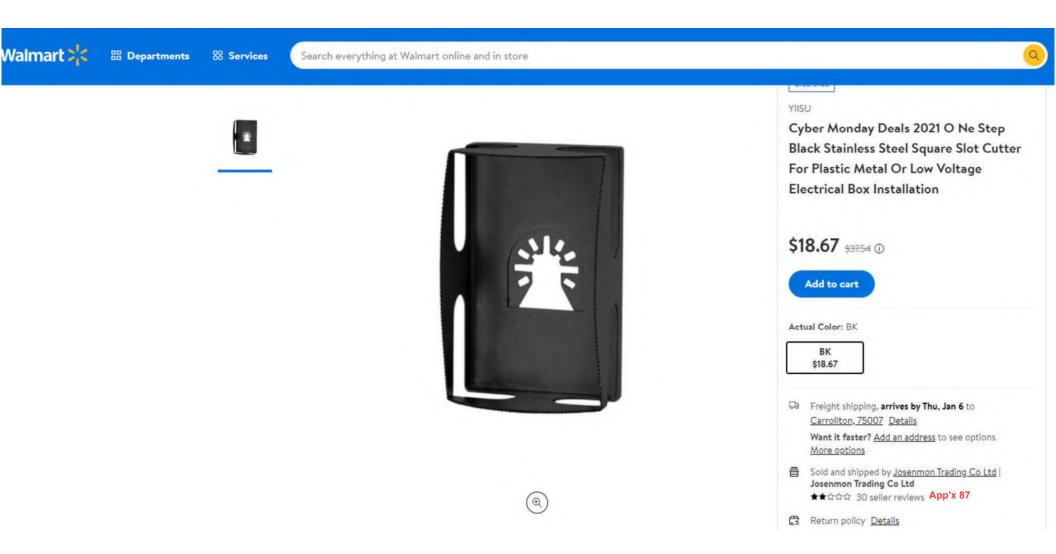
★★☆☆ 29322 seller reviews

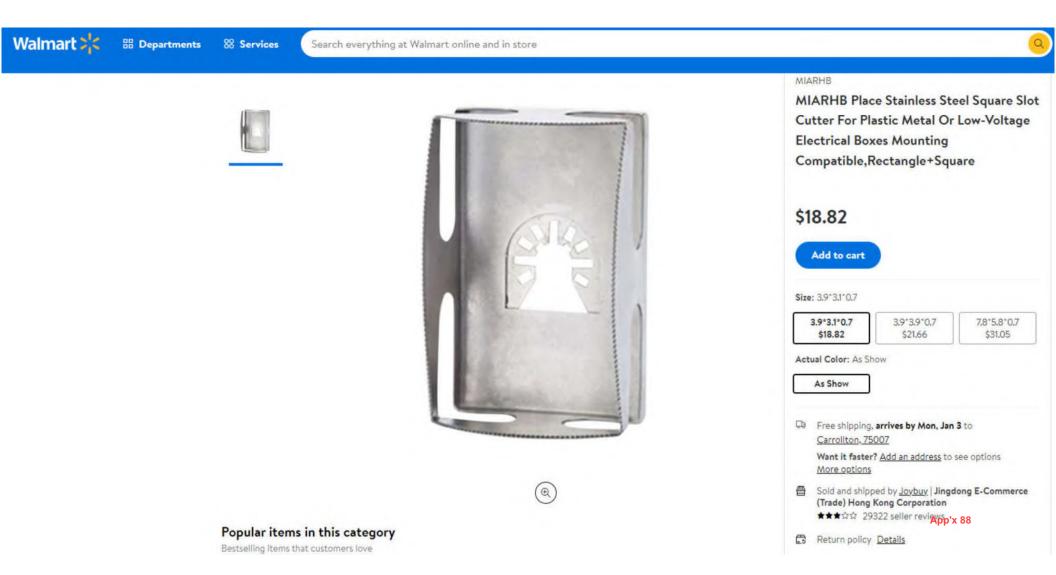
Return policy Details

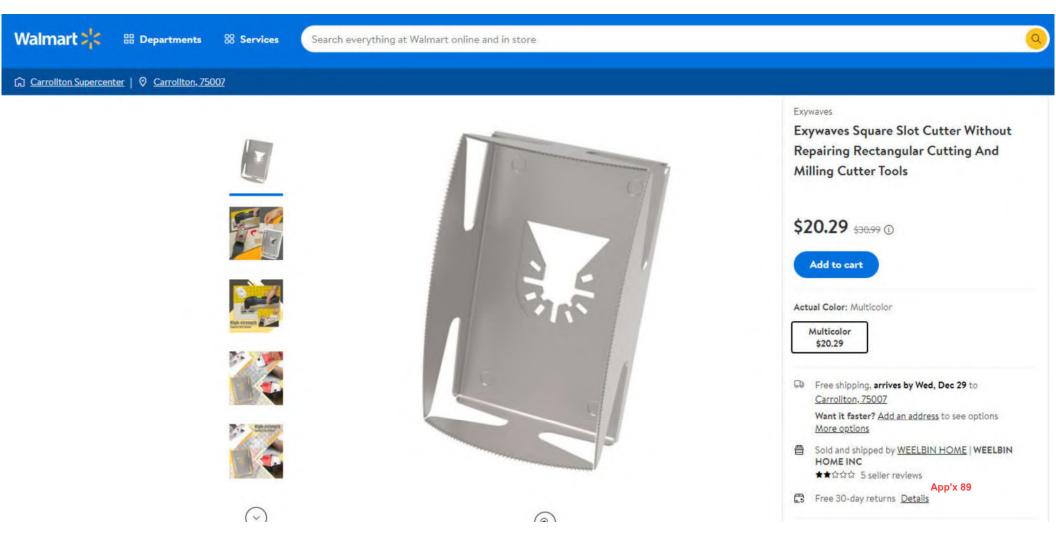




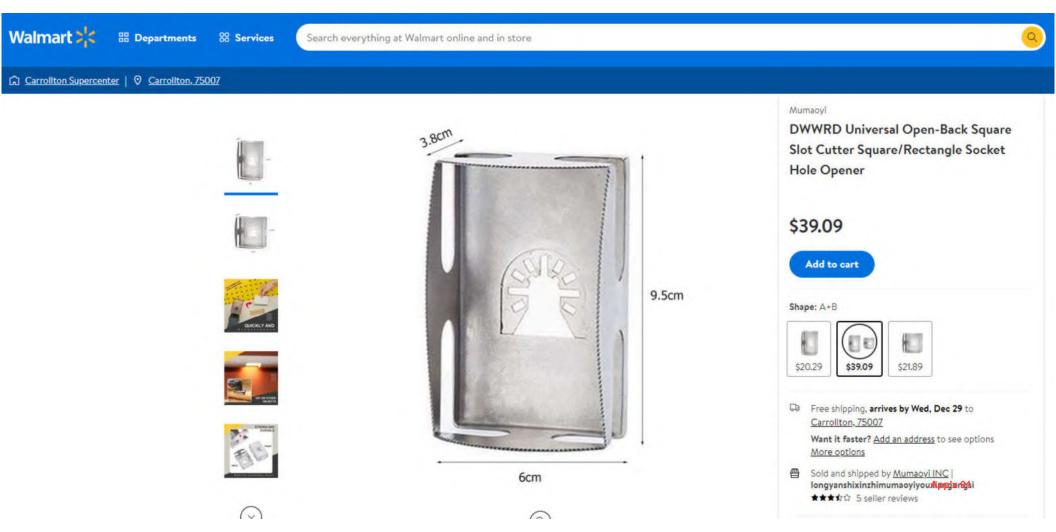


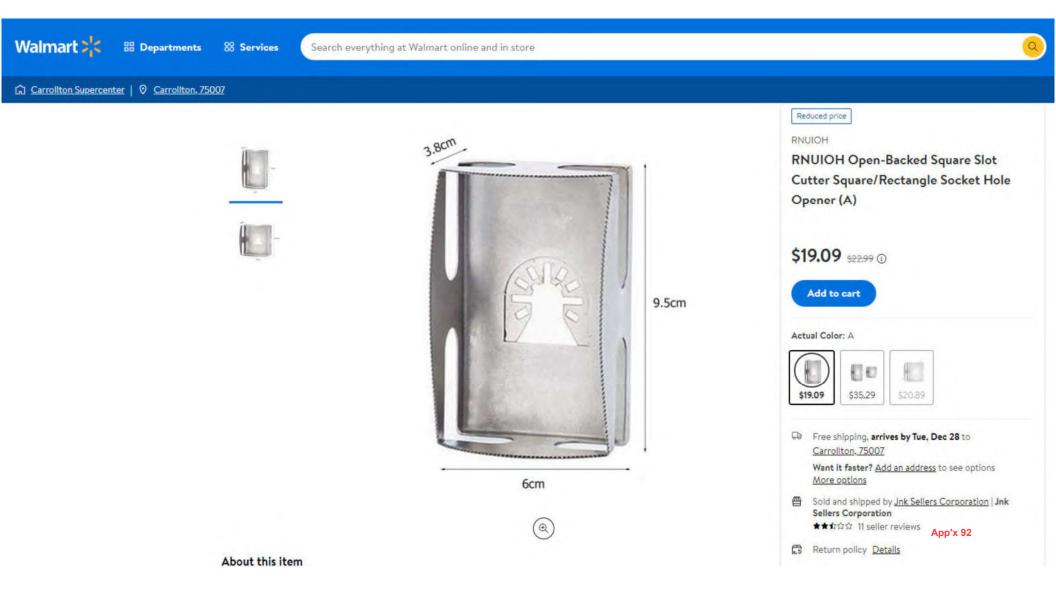


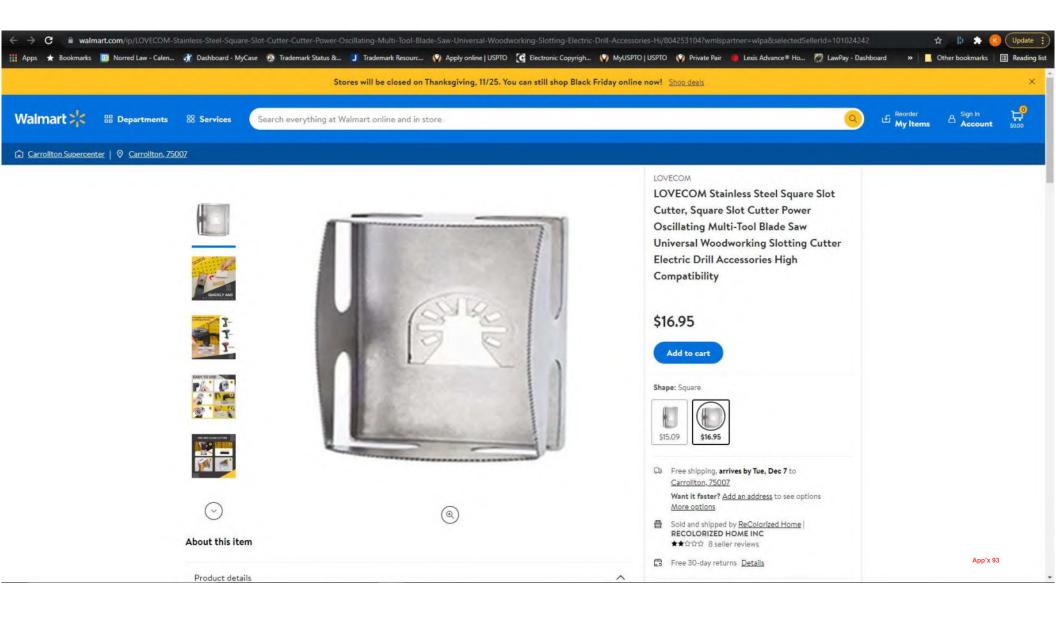


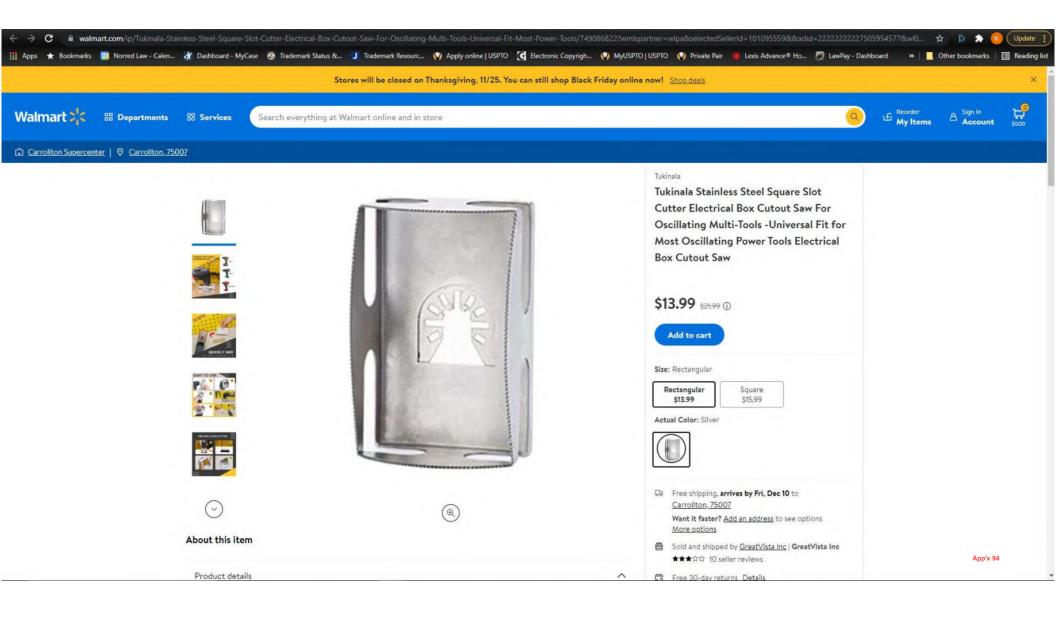














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Arts Crafts & Sewing / Crafting / Craft Supplies / Craft Tools















Latady One Step in Place Stainless Steel Square Slot Cutter for Plastic Metal or Low-Voltage Electrical Boxes mounting Compatible with Most Industry Standard

oscillating Multi-Tools

\$16.99

Latady

Add to cart

Actual Color: Rectangle

Rectangle \$16.99

Square \$15.99

Free shipping, arrives by Thu, Dec 30 to Carrollton, 75007

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Return policy Details

(Q)



B Departments

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Miuline Miuline Stainless Steel Square Slot Cutter, Square Rectangle Milling Cutter Quickly For Plastic Metal Low-Voltage **Electrical Boxes mounting Compatible** \$22.39 (3)1.99 (1) Add to cart Actual Color: Square+Rectangle Rectangle Square

Free shipping, arrives by Wed, Jan 5 to Carrollton, 75007

\$12,39

Square+Rectangle \$22.39

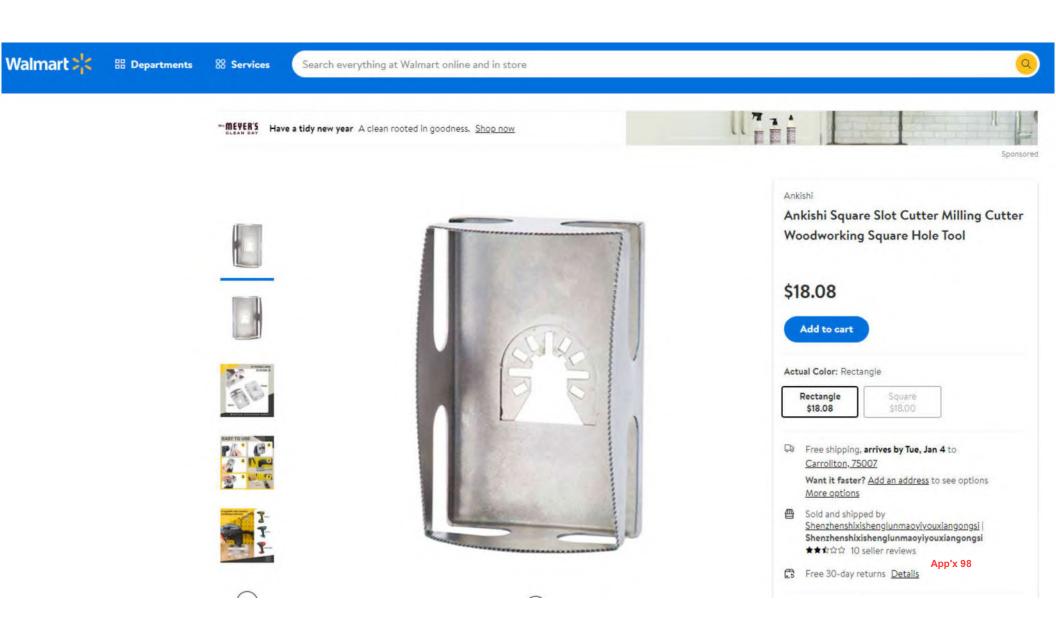
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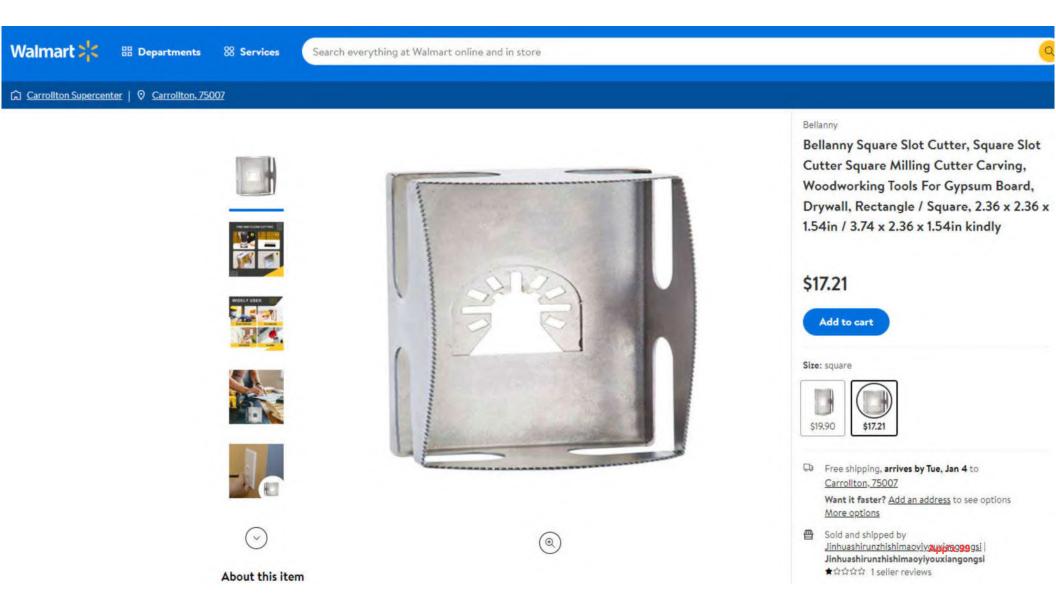
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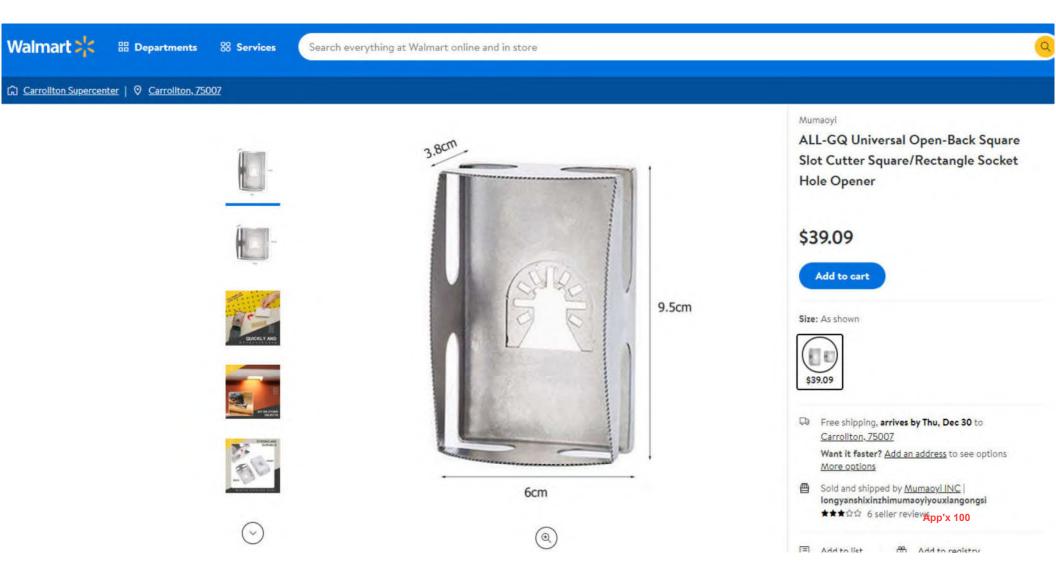
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★★★☆ 6735 seller reviews











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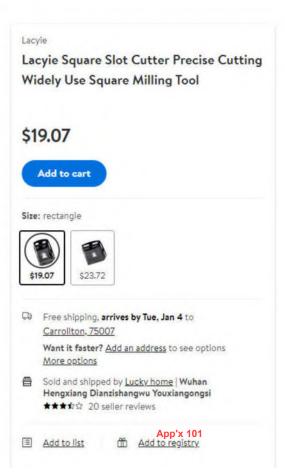


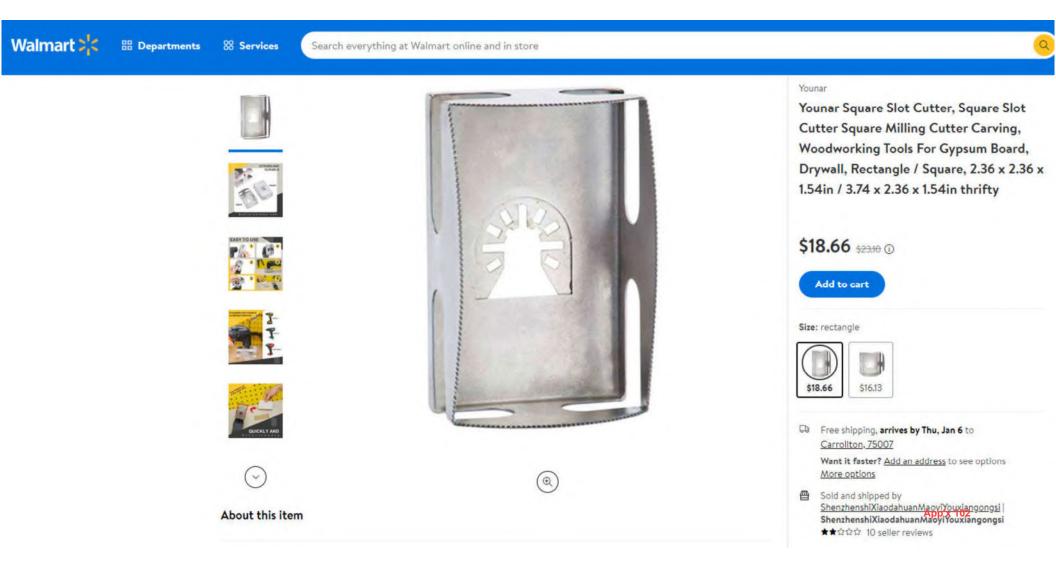
Conquer any mess Get it at a super-low price. Shop now

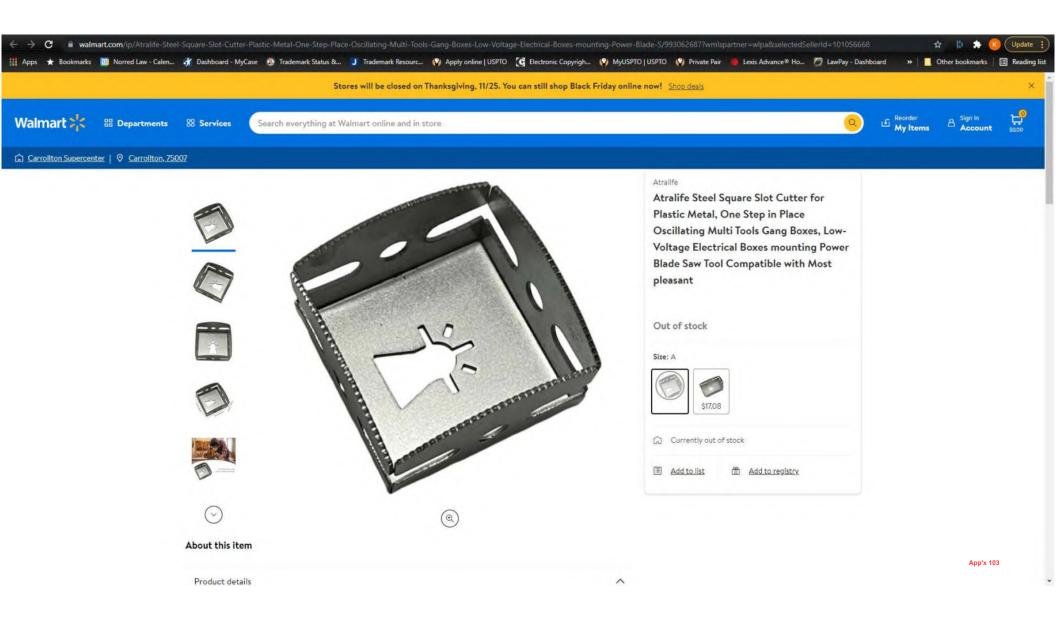


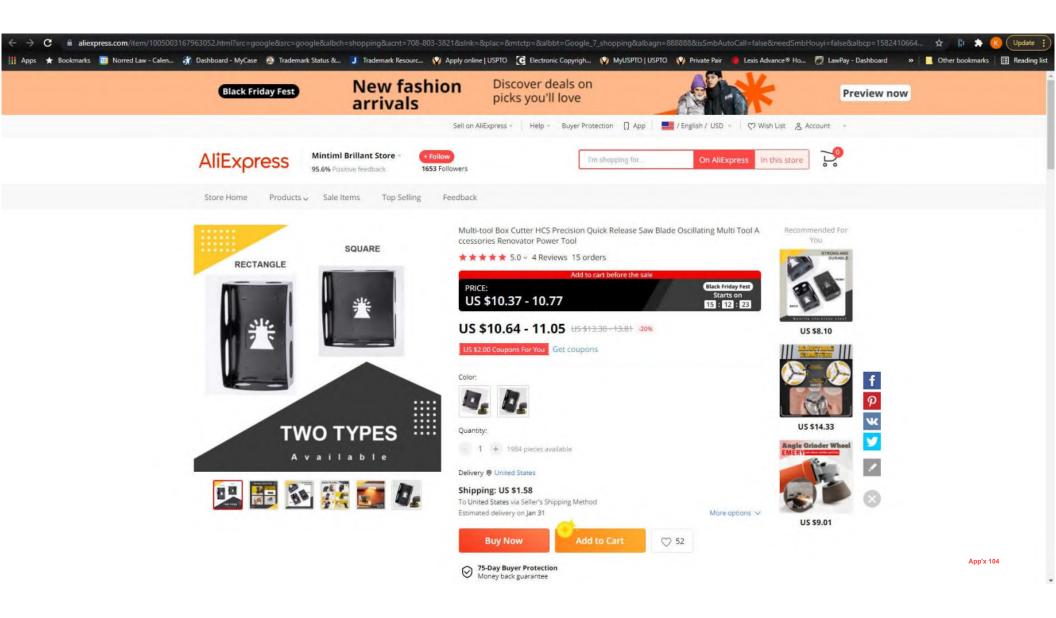


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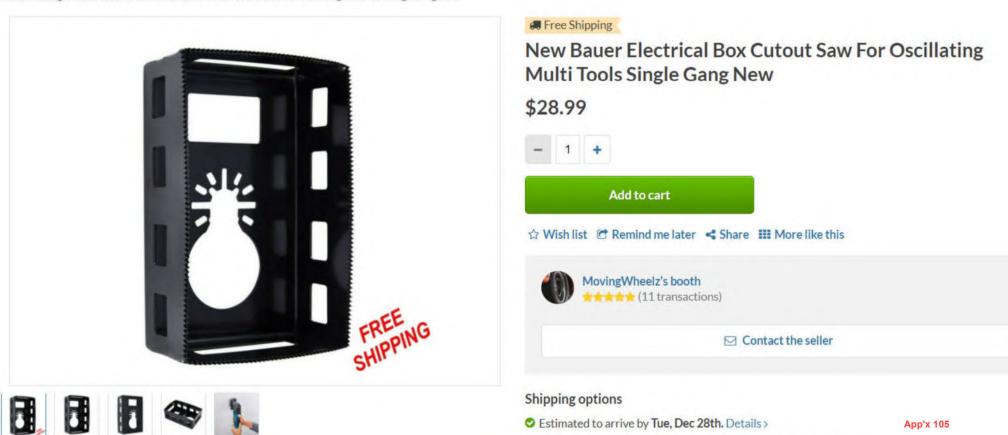




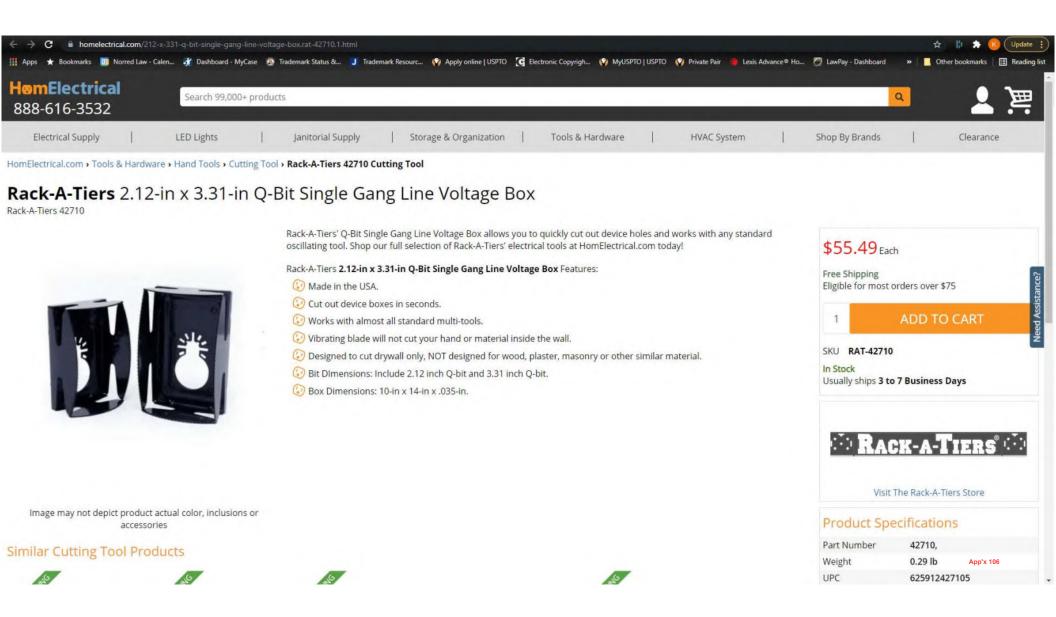


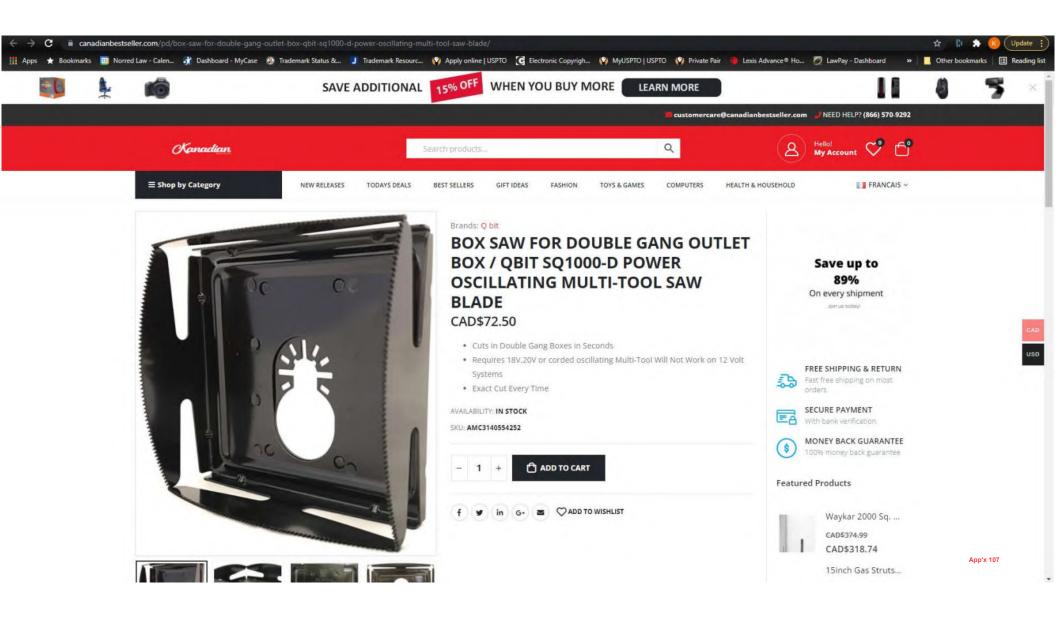


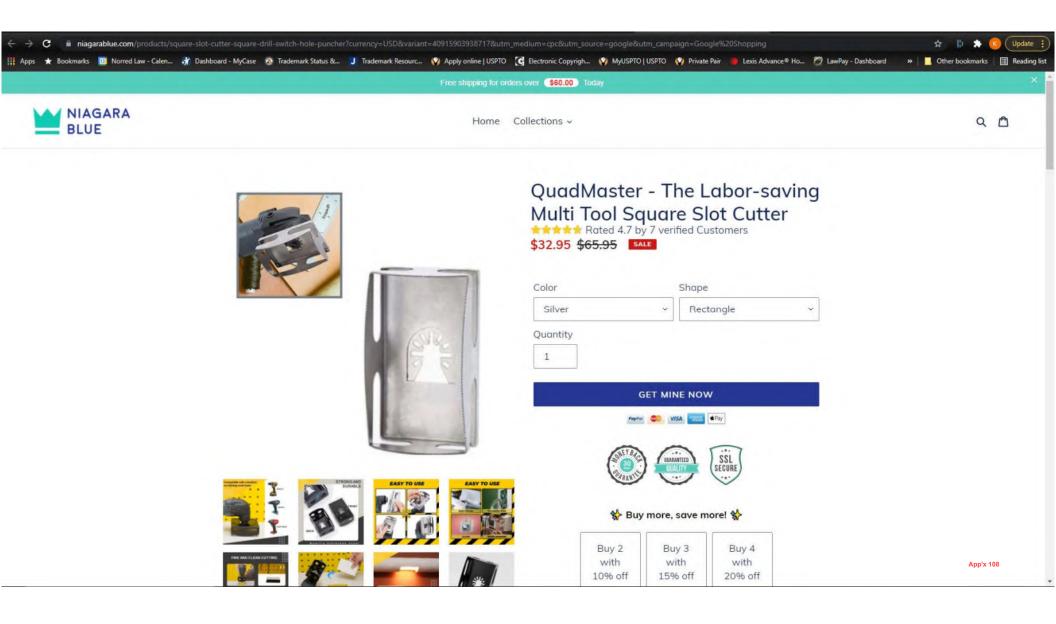
Home » MovingWheelz's booth » New Bauer Electrical Box Cutout Saw For Oscillating Multi Tools Single Gang New

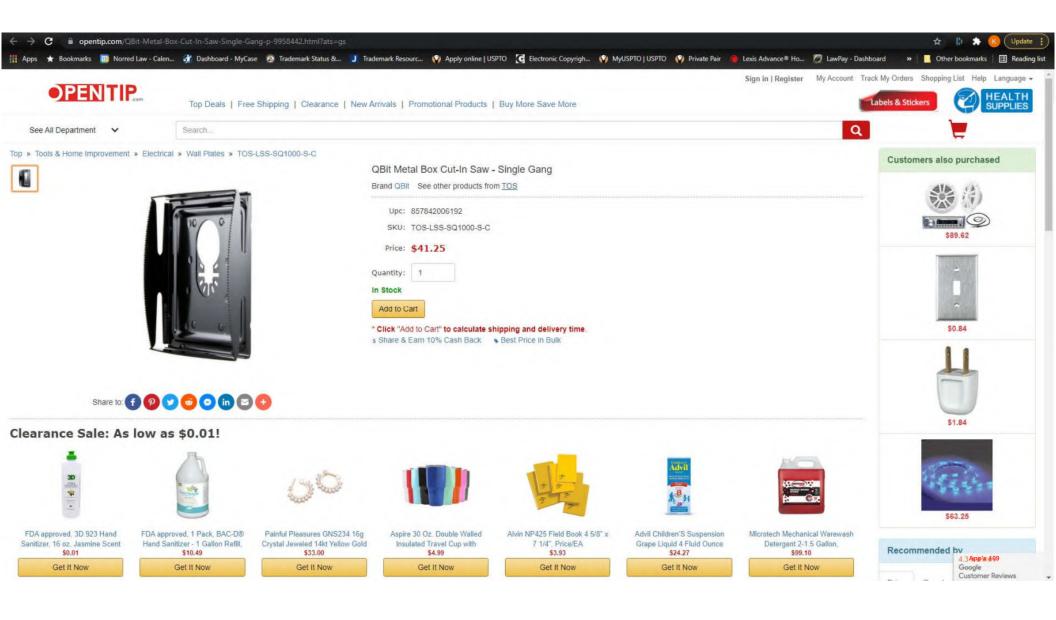


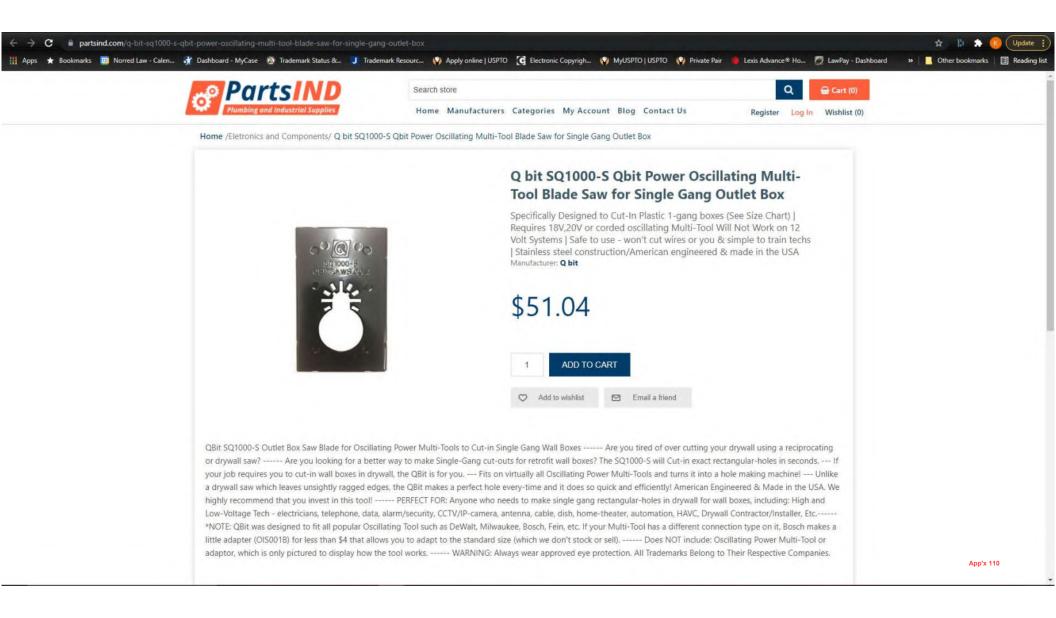
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# IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS - FORT WORTH DIVISION

LABOR SAVING SYSTEMS LTD.	§	
d/b/a Magnepull,	§	
Plaintiff,	<b>§</b>	
	§	<b>Case No.</b>
v.	§	
	§	
HARBOR FREIGHT TOOLS USA, INC.,	§	
DOES 1–79,	<b>§</b>	
Defendants.	§	

#### **DECLARATION OF WARREN NORRED**

- I, Warren V. Norred, pursuant to Fed. R. Civ. P. 65(b)(1), declare as follows:
- 1. "I am over 18 years of age, of sound mind, and otherwise competent to make this Declaration. The evidence set out in this Declaration is based on my personal knowledge.
- 2. I am an attorney at the law firm Norredlaw PLLC, located at 515 E. Border St. Arlington, TX, and I am licensed to practice in the State of Texas.
- 3. Plaintiff Labor Saving Systems Ltd., ("Magnepull") retained Norredlaw PLLC to represent it in the above-styled lawsuit. As counsel of record for Magnepull, I have personal knowledge of this lawsuit, the filings in this proceeding, and the facts related thereto.
- 4. Magnepull is seeking *ex parte* relief and is requesting service by email to the Defendants identified in Exhibit 3 ("Does 1-79") ("Defendants"). Defendants have operated and are operating webstores ("the Infringing Webstores") that are infringing on Magnepull's valid patent registration identified in Exhibit 1.
- 5. The *ex parte* relief requested by Magnepull is appropriate in this instance because immediate and irreparable injury, loss, and damage has already resulted, and will continue to accrue against Magnepull before the Defendants will be able to be heard in opposition on this matter. Magnepull cannot give notice to some of the DOES 1-79 in this matter because they do not publicize their email addresses

or contact information on the Infringing Webstores. Hence, no effective efforts have been made to give notice because Magnepull has found that doing so is not possible. Attempts to give notice are in Exhibit 6.

- 6. Furthermore, notice should not be required in this instance because Defendant's deal in production and marketing of infringing and counterfeit products ("Accused Products"), and are highly likely to transfer data, content, products, and financial assets to other webstores and accounts. Defendants are also likely to transfer assets from U.S.-based financial institutions to offshore accounts outside the jurisdiction of this Court. Such would frustrate Magnepull's ability to obtain meaningful relief and would continue to irreparably harm Magnepull through Defendants' sale and profit from the Accused Products.
- 7. A listing of the various Defendants and the URLs associated with the Infringing Webstores are attached to this Motion as Exhibit 3, and screenshots of the Infringing Webstores as Exhibit 4. These exhibits were prepared under Magnepull's direction, and I have carefully reviewed these exhibits, as well as the URLs to which each exhibit relates, and can attest to their authenticity.
  - 8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on,	
December 29, 2021	
, ,	
	***
	Warren Norred

#### **EXHIBIT 6**

From: Mark Turner <sales@magnepull.com> Date: Wed. Oct 27, 2021 at 9:30 AM

Subject: Patent Infringement

To: <lowpricesupply@gmail.com>

You are selling a product on Amazon that directly infringes on our US patent # US9737941. Please remove this Amazon listing so that we will not have to escalate this to the next level. ASIN: B08F31D3N9

-

Mark Turner

817.320.2288 2620 W Pioneer Parkway

Arlington, TX 76013

A Division of Labor Saving Systems Ltd.

From: Mark Turner <sales@magnepull.com>

Date: Wed, Oct 27, 2021 at 9:25 AM

Subject: Patent Infringement

To: <himshopjordan@163.com>

You are selling a product on Amazon that directly infringes on our US patent # US9737941. Please remove this Amazon listing so that we will not have to escalate this to the next level. ASIN. B09F3DM2G4

Mark Turner

817.320.2288

2620 W Pioneer Parkway

Arlington, TX 76013



A Division of Labor Saving Systems Ltd.

From: Mark Turner <sales@magnepull.com>

Date: Wed, Oct 27, 2021 at 9:28 AM

Subject: Patent Infringement To: <156521715@qq.com>

You are selling a product on Amazon that directly infringes on our US patent # US9737941. Please remove this Amazon listing so that we will not have to escalate this to the next level. ASIN: B09FF7QPX7

Mark Turner

817.320.2288

2620 W Pioneer Parkway

Arlington, TX 76013



A Division of Labor Saving Systems Ltd

------Forwarded message ------From: **Zhu Zoe** <<u>zzhu1106@gmail.com</u>>
Date: Thu, Nov 18, 2021 at 5:55 AM
Subject: Re: Patent Infringemnet

To: Mark Turner < sales@magnepull.com>, < sales@mirashinetools.com>

Dear Mark,

Good Dayl

Our factory cooperated with the big brands through their buying office in China instead direct contact .

Generally the big brands won't be happy to tell others who is their vendor.

I have been doing export business for more than ten years. I started to run a small trading company since end of 2019 after birth of my third kid, doing export business of power tool accessories.

The manager of the oscillating blades factory is my good friend, so I started the Amazon business with their blades this year.

I see you have a full range of gang blades, the purchasing cost from China must be much better than U.S source.

If possible, I want to supply the blades to you or if you want to develop any new products, please consider me as a purchasing source.

About the patent issue,may I pay the patent fee and continue to sell ?

My selling price is much lower than yours, as a DIY level blade. Your blade is the orginal & professional level blade. You can have the market of both professional and DIY line, right? Hope you can consider my proposal and let me know your requirement.

Thank you and have a nice day!

Zoe Zhu MiraShine Tools 86-13450252870

Mark Turner <<u>sales@magnepull.com</u>> 于2021年11月18日周四 上午12:48写道:

Zhu

We may be interested. Do you have a contact in the US from one of the major companies that we can contact?

\*\*\*

## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

VIAHART, LLC	§
	§
	§
v.	§ CIVIL NO. 6:18-CV-604-RWS-KNM
	§
DOES 1-73	§
	§
	§

## **ORDER**

Before the Court is Plaintiff Viahart, LLC's Motion for Alternate Service of Process. Doc. No. 27. Plaintiff asks the Court to permit service of the summonses and complaint to each Defendant via email. Having considered the motion, and for the reasons discussed below, Plaintiff's motion for alternate service is **GRANTED**.

## **BACKGROUND**

Plaintiff Viahart manufactures, distributes, and sells toys and other educational products around the world. Doc. No. 1 at ¶ 9. As part of that business, Plaintiff owns the rights to three registered trademarks. *Id.* at ¶ 10.<sup>1</sup> Plaintiff alleges that Defendants have infringed those marks through their operations on various online e-commerce sites, such as Amazon, Wish, eBay, Ali Express, and Alibaba (the "marketplaces"). Because Defendant businesses operate online through third-party marketplaces, Plaintiff has not been able to ascertain an accurate physical location for any Defendant to perfect in-person service of process. Plaintiff thus seeks alternate service of process.

<sup>&</sup>lt;sup>1</sup> Those trademarks are U.S. Reg. Nos. 5407364 (the "GOODMINTON" mark), 5370197 (the "VIAHART" mark), and 5049910 (the "BRAIN FLAKES" mark).

Plaintiff filed a motion for alternate service prior to the present motion, which this Court denied See Doc. No. 17. In the Order denying the motion, the Court noted that "Plaintiff's blanket at the all 73 manual Defendants' physical addresses are unknown and are not obtainable is not persuasive." Mat 7. Though the Court denied alternate service at that time, the Order permitted Plaintiff to conduct discovery on the marketplaces to locate Defendants' identities and addresses. Mat 12.

After conducing the approved discovery, Plaintiff filed its first Amended Complaint against filey-four Defendants. Doc. No. 25. Of those fifty-four Defendants, eleven were named and tied to aphysical address within the United States. *Id.* International addresses were discovered for additional Defendants. *See* Doc. No. 27 at 3. The remaining Defendants were tied to international addresses, both domestic and international. *Id.* The Clerk then issued summons for the cleven Defendants with domestic addresses. Doc. No. 26.

Defendant at the discovered addresses. Id. Ten of the domestic summonses were undeliverable and accounted by someone who refused to present identification. Id. Plaintiff also attempted to provide a copy of the complaint on the discovered international addresses for additional Defendants via PedEx. Id. Those attempts failed because each address was deficient in some way.

Plantiff has attempted to contact all foreign and domestic Defendants through email addresses discovered through the marketplaces. *Id.* Plaintiff's emails included notice of this suit and an invitation to said. Id. Five Defendants responded to the email, and no emails were returned as indeliverable. Id. In light of the unsuccessful in-person service and the successful emails to all

Defendants, Plaintiff contends that it has shouldered its burden to show that electronic service is reasonably calculated to notify each Defendant of the pendency of this suit and accordingly requests that this Court authorize alternate service of process via email to all Defendants.

## APPLICABLE LAW

#### Domestic Service

Federal Rule of Civil Procedure 4(e) governs service on an individual within a judicial district of the Linited States. The Rule permits service on an individual by "Following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." FED. R. CIV. P. 4(e)(1). As this suit was brought in the Eastern District of Texas, Plaintiff may serve Defendants in any manner author zed by Texas law or the jurisdiction in which each Defendant is served. Texas Rule of Civil Procedure 106 provides that "if a plaintiff's attempts to serve a defendant in person are transcessful, a court may authorize substitute service upon receipt of an affidavit satisfying Rule 106(b). "Inner v. City of Cibolo, Texas, No. SA-20-CV-350-JKP, 2020 WL 2043980, at \* 1 (W.D. Tex. Apr. 27, 2020). Then, "a court may authorize substituted service which, shown from the affidavit or other evidence, is reasonably calculated to provide notice." Selippos Technical Lid. v. First Mountain Bancorp, No. 4:12-CV-1508, 2013 WL 1181469, at \* 2 (S.D. Tex. Mar. 20, 2013) (citing State Farm Fire & Cas. Ca. v. Costley, 868 S.W.2d 298, 299 (Tex. 1993)).

#### International Service

Federal Rule of Civil Procedure 4(h)(2) allows a foreign business entity to be served "in any manner prescribed by Rule 4(f) for serving an individual . . . ." FEIL R. Cov. P. 4(h)(2). Federal Rule of Civil Procedure 4(f) allows the service of process of an individual not within any judicial district of the United States:

- (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Indicial and Extrajudicial Documents;
- (2) if there is no internationally agreed coeans, or if an international agreement allows but does not specify other means by a method that is reasonably calculated to give notice:
  - (A) as prescribed by the levelen country's law for service in that country in an action in its courts of general jurisdiction;
  - (B) as the foreign authority in response to a letter rogatory or letter of request; or
  - (C) unless prohibited by the foreign country's law, by:
    - delivering a copy of the summons and of the complaint to the individual posterally; or
    - (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or
- (3) by other means not prohibited by international agreement, as the court orders.

  PDD. R. Cov. P. 4(f)(1)-(3).

The "use of Hague Convention procedures is 'mandatory if available at the place of service." RPost Holding, Inc. v. Kagan, 2012 WL 194388 at, \* 1 (E.D. Tex. Jan. 23, 2012) (quoting Geometry Ins. Co. v. Kavanagh, No. 3:10-CV-1254, 2011 WL 1791241, at \* 2 (N.D. Tex. May 10, 2011)). However, "the 'Convention shall not apply where the address of the person to be served with the document is not known." M. (etcing Chanel, Inc. v. Zhibing, No. 2:09-CV-2833, 2010 WL 1009981, at \* 3 (W.D. Texn. May 17, 2010)).

When the Hague Convention is impolicable between two signatory nations, service of process under Rule 4(f)(3) is permissible. It at \* 2. Service under Rule 4(f)(3) "must comport with constitutional notions of due process." It To satisfy this standard, "the method of service must be reasonably calculated, under all discussances, to apprise interested parties of the

pendency of the action and afford them an opportunity to present their objections." Id. (quoting Midlime v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 312 (1950)). Courts have held that service by small can satisfy the requirements of both Rule 4(f)(3) and due process. See, e.g., id.; Fed. Truste Comm'n v. EMP Media, Inc., No. 2:18-CV-35-APG-NJK, 2018 WL 664796, at \* 1. ("Service by email is proper when the defendant is unreachable by other means or does not have a known physical address.").

## ANALYSIS

# Service of Process by Email;

Plaintiff requests that this Court authorize alternative service of process by email on the Foreign Defendants pursuant to FID. R. CIV. P. 4(f)(3) and on the Domestic Defendants pursuant to FED. R. CIV. P. 4(e)(1) and TEX. R. CIV. P. 106(b)(2). Doc. No. 27 at 15. Plaintiff states that it will serve the complaint on all Defendants by email upon authorization by this Court. Id.

# A. Service on Foreign Defendants

The first issue regarding international service is whether the Hague Convention applies. If it does, its procedures are mandatory if available at the place of service. RPost Holdings, Inc., 2012 WL 104368, at \*1. Both China and the United States are signatories to the Hague Convention. See Clausel. Inc., 2010 WL 1009981, at \*3. The Hague Convention is therefore mandatory if available at the place of service. Yet, "the Convention shall not apply where the address of the person to be served with the document is not known." RPost Holdings, Inc., 2012 WL 194388, at \*1. Accordingly, if Plaintiff has shown that the addresses of Defendants are unknown, the Hague Convention to longer applies.

In its motion for afternate service, Plaintiff states it has "done all it can do to locate physical addresses of the Defendants, but each address has proven to be false or deficient in some way."

Doc. No. 27 at 9. Plaintiff has discovered addresses through the marketplaces and has attempted to reach defendants via international mail. *Id.* at 3, 8. Each attempt failed because the addresses proved to be false or otherwise inaccurate. *Id.* 

The discovery of physical addresses and the attempted—and ultimately unsuccessful—effort to reach Defendants at those addresses shows that the international Defendants' addresses are unknown. Nothing before the Court disputes that the actual location of each foreign Defendant remains unknown. Because the foreign Defendant addresses are unknown, the Hague Convention is inapplicable. See RPost Holdings, Inc., 2012 WL 194388, at \*1. Accordingly, service of process under Rule 4(f)(3) is not prohibited by international agreement. Id. at \* 2 ("[T]he Hague Convention is inapplicable and accordingly service of process under Rule 4(f)(3) is not prohibited by international agreement.").

Because traditional service under the Hague Convention is inapplicable, the Court next considers whether Plaintiff's proposed Rule 4(f)(3) email service comports with constitutional notions of due process. Id. ("Any method of service of process arrived at pursuant to Rule 4(f)(3) must comport with constitutional notions of due process."). To satisfy this requirement, the method of service must be "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Id. (citing Midliane, 339 U.S. at 312).

Plaintiff explains that "the email addresses procured from the Marketplaces were the email address that each of the Defendants designated as their means of contact for business and notification purposes." Id. Plaintiff concludes that "[g]iven that each of the Defendants are parties to this lawsuit because they do business through e-commerce sites that utilize email for communication, service via email is reasonably calculated to apprise the Defendants of the

pendency of this action and afford them an opportunity to present their objections." Doc. No. 27 at 8.

Plaintiff asserts that Charel. Inc. v. Partnerships & Unincorporated Ass as is analogous. See Duc. No. 27 at 9, No. CV H-12-2085, 2012 WL 12894807 (S.D. Tex. Cet. 10, 2012). In Chanel, "Jajkier conducting different investigations, plaintiff was not able to identify valid physical addresses for service of process on defendants." Id. \* 1. The Chanel Count noted that "[b]ecause defendants have provided invalid physical addresses and plaintiff has not been able to find other addresses for them, plaintiff cannot serve defendants by traditional means." Id. The Court then allowed service by small because the plaintiff "had recently verified that all but four (4) of the defendants have at least one operational electronic mail address." Id. As to whether an email address is operational, Federal Courts have presumed delivery of an anall if it is not returned undeliverable and the email address is used by the Defendant in confineing husiness. See EMP Meella, 2018 WL 564796, at \* 2 (ching Tayo Tire & Rubber Co., Ltd. v. CIA Whell Grp., No. SA CV 13-6246-DOC, 2016 WL 1251008 (C.D. Cal. Mar. 25, 2016) (finding that an email is presumed delivered when it is not returned as undeliverable)).

Since conducting Hamited discovery in this case, Plaintiff has ascertained many of Defendant's putative physical addresses and has attempted, but failed, to serve any Defendant in person. Doc. No. 27 at 9. Plaintiff has also received Defendants' email addresses and has sent emails to each discovered anal address. Id. No emails were returned as undeliverable, and five responses were received. Id. at 10.

The record before the Court shows that Plaintiff made diligent efforts to obtain physical addresses for Defendants, but that attempted delivery of the complaint was passecessful because Defendants' addresses are unknown. Plaintiff has thus shown that the Hague Convention is no

longer applicable and service pursuant to Rule 4(f) is proper. As its requested 4(f) service, Plaintiff requests using emails discovered through the marketplaces. The discovered email addresses are those gathered by the marketplaces in their course of conduct with Defendants. The Defendants' email addresses have recently been tested and the messages are presumed to have been delivered because none bounced back as undeliverable. Thus, under these facts, service of process by email is reasonably calculated to notify all foreign Defendants of this suit.

#### 3. Service on Domestic Defendants

Federal Rule of Chill Procedure 4(e)(1) permits service on an individual by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." FED. R. Civ. P. 4(e)(1). As this suit was brought in the Eastern District of Texas, Plaintiff may serve Defendants in any manner authorized by Fexas law. Texas Rule of Civil Procedure 106 provides that "if a plaintiff's attempts to serve a defendant in person are unsuccessful, a court may authorize substitute service upon receipt of an affidavit satisfying Rule 106(b)." Spencer, 2020 WL 2043980, at \* 1; Tex. R. Civ. P. 106(b). Federal Courts have permitted service by email through application of Texas law. See Spencer, 2020 WL 2043980, at \* 2 (finding that the proposed email service was reasonably calculated to provide defendants notice of suit); Selippos, 2013 WL 1181469, at \* 3.

Plaintiff attempted service via process server at eleven domestic addresses. Doc. No. 27 at 3. Ten summenses were returned undeliverable, and one was accepted by an individual who refused to provide identification. Id. Plaintiff has thus attempted service through traditional means and has shown that it was unsuccessful in doing so.

Plaintiff was able to discover email addresses for the demestic Defendants through the marketplaces. Id. Plaintiff states that these email addresses are used by Defendants in their

communications with the marketplaces and are thus likely to be monitored. id. None of Plaintiff's test emails were teturned as undeliverable. Id. In light of the fact that Plaintiff has diligently attempted in person service on the domestic Defendants, and that the domestic Defendants use the known email addresses to conduct business with the marketplaces, email service will be "reasonably effective to give the defendant[s] notice of the suit." Tex. R. Crv. P. 106(b).

CONCLUSION

Plaintiff has attempted to serve domestic Defendants with summonses and the complaint through traditional means. Those efforts failed, and Plaintiff has now shown that email service on the domestic Defendants is reasonably effective to give the defendants notice of this suit. Plaintiff has also attempted to comply with Hague Convention rules on international service. Plaintiff has shown that the fareign Defendants' addresses are not known. Plaintiff has further shown that service via small is reasonably calculated to apprise the foreign Defendants of the pendency of this suit. Accordingly, it is

ORDERED that Plaintiff's motion for alternate service (Dec. No. 27) is GRANTED.

Plaintiff may serve the domestic Defendants with the summonses and complaint via small at the email address provided by the marketplaces. Plaintiff may serve the foreign Defendants with the complaint via small at the email addresses provided by the marketplaces.

So ORIDERED and SIGNED this 17th day of June, 2020.

K. NICOLI, MITCHELL

UNITED STATES MAGISTRATE JUDGE

# IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

BVE BRANDS, LLC,

Plaintiff,

V.

1520-CV-505-RP

DOES 1–82, the individuals, entities, partner bips, and associations identified on Schröde A,

Defendants.

#### ORDER

Before the Court is Plaintiff BVP. Brands, LLC's ("BVF") combined ex-parte application for a temporary restraining order ("TRO") and asset freezing order, motion for expedited discovery, and motion for alternate service of process. (App. TRO, Dkt. 3). After considering BVE's arguments, the record at this early stage of the Infgation, and the relevant law, the Court grants each of BVE's requests.

## I, BÁCKGRÓUND

BVE manufactures and distributes a literant tool for making kebabs, the "Brochette Express," which it asserts is made "to the highest quality standards using only food grade plastics and [is] 100% made in the United States," (Compl., Dkt. 1, at 5–7). BVE holds a trademark registration for the Brochette Express, which it displays "promittently" on the tool and has "spent considerable resources advertising, marketing and promoting," (App. TRO, Dkt. 3, at 10). BVE also holds a copyright registration for photographs used in advertising the Brochette Express. (Id.). It argues that its "efforts have resulted in substantial sales and invaluable consumer goodwill." (Id.).

All citations to page numbers for ducketed documents refer to the CM/HCP file stamp on that page.

BVE contends that each Defendant, (see Sched. A, Dkt. 1-1), "targets consumers in the United States, and has offered to sell and ... has sold and continues to sell counterfeit products in violation of BVE's trademark and coppright." (App. TRO, Dkt. 3, at 11). "BVE reached this constraion by visually inspecting the products as they appear on the Infringing Websites making test purchases of the Counterfeit Products and comparing the price of the Counterfeit Products to its genuine Brochette Express Products." (Id.). According to BVE, "Defendants have rules and Spality of the Counterfeit Products or control the assisting of its copyrighted Photographs," "leading to loss of brand confidence, loss of future sales and loss of market share." (Id. at 11–12).

BVE has identified Defendants based on seller profiles in online marketplaces. (For School. A. Dist. 1-1). BVE believes that "mony if has all Defendants are Chinese residents" and that Defendants "hold most of their assets on China." (App. TRO, Dkt. 3, at 24, 27). However, BVE "could not discover a verifiable relosess for nearly all of the Defendants", when it ordered products from Defendants, "some of the addresses provided pointed to candom apartment buildings, third-party folfillment warehouses in Optades, California, an intersection and even a pond." (Mat 28-29).

In its complaint, BVE ultimately weeks injunctive relief against Defendants and to hold them. bable for statutory damages, alleging violations of 15 U.S.C. § 1114 (trademark infringement and counterfeiting), 15 U.S.C. § 1174(t) (and to competition), Section 106 of the Copyright Act (copyright infringement), as well as giral conspiracy to commit unfair competition and copyright infringement. (Compl., Dkt. 1, at 13–23).

#### II. TEMPORARY RESTRAINING ORDER

#### A. Legal Standard

"To support the 'extraordinary equitable remedy' of a preliminary injunction, the plaintiff
must establish four elements. '(1) a substantial likelihood of success on the merits; (2) a substantial

finest that the movant will suffer irreparable logary if the injunction is denied; (3) that the finesteard injury control is any damage that the injunction might cause the defendant; and (4) that the injunction will not disserve the public interest. \*\* Julian Warm's Hadde Org. a Carrier, 700 F.3d 448, 452 [5th Ch. 2014] (quoting Hoover v. Morales, 164 F.3d 221, 224 (5th Ch. 1996). \*\*A temperary restaints on let is an estimated in property seeking it has death carried the burden of persuasion on all loan requirements. \*\* Value Warm's Hadde a Property seeking it 18 B.3d 535, 545 (5th Cir. 2005)).

## B. Analysis

## 1. Likelihood of Success

BVI has sufficiently demonstrated a likelihooyd of success on the merits for purposes of the TRO graduits

To prevail on its trademark infringement claims trader the Lantann Act. BVE trast

dercorrect that "(1) it possesses a legally protectable trademark and (2) [Defendants] use of this

trademark treates a likelihood of confusion as to source, affiliation, or sponsorship." Journal

Prof. Sp., But a Streambur Mg., Inc., 851 F.3d 440, 450 (5th Cat. 2017) (gooding Note Spin Design

LLC a Haple Enters, Inc., 783 F.3d 527, 126 (5th Cat. 2013)). If BVE can prove the latter element, it may the prevail on its unifair competition claims under the Landau Act. See Visional Media's

PRI. CLA Habitany, Inc., 214 F.3d 658, 663 to 1 (5th Cat. 2000). In contrasting whether a likelihood of confusion exists, Fifth Circuit courts consider eight "digits of confusion": "(1) the type of inail.

<sup>\*</sup>HVE states that its application for a temporary restraining order permits only to its Lanham Act claims, not its claims for copyright intringement or civil conspinace. (App. TRO, Dlat. 3, at 15 n. I). Even so, it appears that the systems showing a likelihood of success on the former claims applies to the latter claims as well. (A). The Creat lands that BVE's requirement to demonstrate a substantial likelihood of success applies to the means of its case overall as opposed to each of as claims inclinatedly. See District a Aband. U.S. Lea, 505 F 50, 314, 378 [th Cir. 2008].

allegedly infilinged, (2) the similarity between the two marks, (3) the similarity of the products or services. (4) the identity of the retail cordets and purchasers, (5) the identity of the advertising media used, (6) the defendance intent, .... (7) any evidence of actual confusion[3] ... [and] (8) the degree of case exercised by potential purchasers." Bd. of Superdiers for Louisiana State Univ. Agric. & Medi.

Call. c. Smark Apparel Co., 550 P.3d 465, 478 (5th Cir. 2008) (quoting Westchaster Media, 214 F.3d at 664) [citing Am. Rin, Inc. c. Produces Rin Mill., Inc., 518 F.3d 321, 329 (5th Cir. 2008)). "No single factor is dispositive, and a finding of a Medianoid of confusion need not be supported by a majority of the factors." Comm Properties, Inc. a Comm Properties, Inc. 752 F.2d 145, 150 (5th Cir. 1985).

Ultimately, "[Gikelbood of confusion is synonymous with a probability of confusion, which is more than a inetic possibility of confusion." Westchaster Media, 214 F.3d at 663–64.

## a. Element (1): Legally Protectable Trademark

Wor element (I), BVE has shown that it holds a legally protectable teademark for the word mark "BROCHETTE EXPRESS" and has continually used it for five consecutive years since its date of registration. (App. TRO, Dkt. 3, at 16). This showing suffices to establish BVE's likelihood of success on element (I). In Among Space, Inc. a. Main Mini Stonge, 608 F.3d 225, 237 (5th Cir. 2010) ("Registration of a mark with the PTO constitutes prima facile evidence of the mark's validity and the registrant's exclusive eight to use the registered mark in commerce with respect to the specified goods or services." A. Am. Ris., 548 F.3d at 330 a.25 (citing 15 U.S.C. § 1065) ("A registered mark that has been and is still in continuous use in commerce for five consecutive years subsequent to the date of such registration is incontessable.").

# b. Elcincht (2): Likelihood of Confusion

For element (2), BVE has above that a likelihood of confusion exists under the "digits of confusion" test. For digit (1), generally, "[f]he more distinctive a mark, the stronger the mark."

Vianua Lett a. IJR. Capital Investment, L.L.C., 821 F.3d 178, 193 (5th Cir. 2018). While BVE

apparently argues that "the BROCHELTE ENPRESS mark is a strong and distinctive mark" simply because it is "registered with the United States Patent and Trademark Office." (App. TRO, Dkt. 3, at 17), this digit instead "refers to the five categories of increasing distinctioness that marks generally fall into generic, descriptive, suggestive, arbitrary, and fanciful." Strippen to Educ., Inc. v. Houston Indep. Sch. Dist., 912 F.3d 805, 814 (5th Cir. 2019), as redised (Feb. 14, 2019). The "BROCHETTE EXPRESS" mark is suggestive it "suggests, but does no describe, or attribute of the good; it requires the consumer to exercise his imagination to apply the miderark to the good." Id. (quoting Xivene Lushes, LLC & Xiended Beauty, Euc., 576 F.3d 221, 227 (5th Cir. 2007); of. id. ("A generic mark is simply the ordinary name of the product." [ A [ A descriptive mark emixeys information about the product or service." I de Calabraty and fame ful mades have be relation to the product of service."). "The consumer must excicise some imagination to associate" the "BROCHETTE EXPRESS" mark with the idea of a kitchen tool nogant for use with "fruit skewers, 227; (Compl., Dkt. 1, at 6). More distinctiveness and less natural or literal content concespond with increased mark strength," and "[i]t is proper to give more weight to distinctive portions of a mark and less weight to unremarkable or generic portions." Xirone Laries, 576 F. 3d at 227. Suggestive marks, such as "BROCHETTE EXPRESS," are entitled to protection, so BVB has established digit (1). See id. at 228.

For digit (2), BVE has established that "comparing the two marks appearance and how they are used by Defendants and BVE shows the marks are identical in appearance." (App. TRO, Dkt. 3, at 17). Truly identical marks easily satisfy this digit's requirements. Set X 1 1 Labe. 576 F.3d at 227.

For digit (3), similarly, BVE has established that "each Defendant is using the same mark [as BVE] for the same products, albeit counterfeits, offered for sale on the same Internet platforms."

(App. TRO, Dkt. 3, at 17). Because "[ti]he greater the similarity between the products and services,

the greater the likelihood of confusion," this digit weighs in favor of likelihood of confusion. Xireme Lashes, 576 F.3d at 227 (quoting Exxon Corp. of Linear Major Exch. of Hundry, Inc., 628 F.2d 500, 505 (5th Cir. 1980)).

For digit (4), BVF, argues that there is "substantial similarity of retail outless and customers . . . because both parties use the same means and channels of commerce to maget the same Internet consumers looking for genuine BVF products on the Internet." (App. TRO, Day & at 17). But while BVE states that Defendants sell products on ecommerce websites including "eBsy, WISH, Amazon, Alibaba, AliExpress, Jand DHGate," BYE does not assert that it uses any of these websites except Amazon. (Compl., Dkt. 1, at 9). Inseco, it asserts that "file December Inclinging Webstores advertise and sell Counterfeit Products online, just like BVE." (App. TEO, Dkt. 3, at 17; see also Hart Decl., Dkt. 3-1, at 3 ("Online sales of Brochette Express product on Interior platforms such as Amazon represent 100% of BVH's business. In Typically, It he smaller the overlap between the retail outlets for and the predominant consumers of the plaintiff and the distendant's goods, the smaller the possibility of confusion." Streamline Frod. Syz., 851 F.3d at 455; But see Mirane Luches, 573 F.3d at 229 (quoting Sun-Fun Prod., Inc. v. Santon Research & Dev. Inc., 656 F.2d 186, 192 (5th Cir. 1981)) (when "[b]uyers cannot 'compare the products side by side," the likelihood of confusion may increase). Here, BVE has not specifically demonstrated a large overlap between the retail outlets for its and Defendants' goods, though the predominant consumers of each are likely the same. Even so, though, both BVT and Defendants ultimately seek to land their products in the hands of home cooks, and have their products used in their customers' kitchens. See Xinem Lands, 513 F.3d at 229. This broad view of the potential overlap is warranted, particularly when, as here, certain of the outlets at issue dominate the marketplace. Otherwise, under an analysis using a purely mithmetic calculation of the overlap, a junior mark user offering a product in a large number of small outlets and a single large one—the latter producing the majority of sales—could avoid a finding of

likelihood of confusion on this digit if the senior mark user primarily sells the product in large success. All things considered, then, this digit weighs in favor of likelihood of confusion, though not as success as it otherwise might.

For digit (5), the analysis is similar: BVE argues that "Defendants use websites such as Amazon, Wish, eBay, Ali Express, [and] Alibaba to advertise their products; just like BVE does on Amazon." (App. TRO, Dkr. 3, at 17). Even though "[f]he parties do not advertise in identical magazines," they still "target the same class of buyers," "support[ing] an inference that the parties use similar advertising and marketing channels" and weighing in favor of likelihood of carifusion.

\*\*X\*\*\*\*\*Lanta\*\*\*, 573 F.3d at 229.

For Agit (6), BVE argues, in a conclusory fashion, that "Defendants are intentionally using the BRACTETTE EXPRESS mark to confuse and deceive the consuming public into thinking the Counterfeit Products are manufactured by or emanate from BVE." (App. TRO., Dkt. 3, at 18).

However, "If there is no evidence of intent to confuse, then this factor is neutral." Viscon Intl., 891

B.3d at 193. "Evidence that a defendant intends to 'pass off' its product as that of another can be found through imitation of packaging, similar distribution methods, and more." Id. at 196. But "more assumeness" of a senior user's mark does not establish bad intent. Id. BVE does present some evidence, however, that this sort of initiation is occurring here. (See, e.g., Compl., Dkt. 1, at 9–10 filephting BVE and Defendants' portrayals of their products, which appear highly similar). The Court thus finds that in the absence of more conclusive evidence of intent, this digit weighs somewhat in favor of likelihood of conclusion.

For digit (7), "[e]vidence that consumers have been actually confused in identifying the defendant's use of a mark as that of the plaintiff may be the best evidence of a likelihood of confusion." Smack Apparel, 550 F.3d at 483. The Fifth Circuit has "set a low bar for this showing, stains that a plaintiff need provide 'very little proof of actual confusion... to prove likelihood of

Confusion.\*\* Streamline Fred. Sys., 851 F.3d at 457 (quoting Xirems Lashes, 573 F.3d at 229).

Nevertheless, this factor weighs against likelihood of confusion in this case. BVE presents no evidence of actual confusion, contending instead that "actual confusion can be inferred from Defendants selling counterfeit look a-like versions of the Brocheme Express Products." (App. TRO, Dkr. 3, at 185; g. Streamline Prod. Sys., 851 F.3d at 457 ("Testianony of a single known incident of actual confusion by a consumer has been found to be sufficient evidence to support the district court's finding of actual confusion.").

For shirt (8), the degree of care exercised by potential purchasers is "dependent in part on the prist of the item"; when it is "relatively inexpensive, a buyer may take less care in selecting that item, abortoby inexcasing the tisk of confusion." Smanthin Prod. Spc., 854 F.3d at 458 (quoting Imask Appara), 550 F.3d at 488). "Under this digit, the greater the care potential purchasers exercise, the less likely in is they will confuse a junior mark user's products or services with the senior mark user's products or services." Springbands to Educ., 912 F.3d at 817. The Fifth Circuit has held that purchasers of goods meant for typical consumers "are likely to be less deliberative" when compared to purchasers who "are buying for professional and institutional purposes at a cost in the themsands of delibers and so "are wirtually certain to be informed, deliberative buyers. Orack Corp. a U.S. Filter Ipatana, Inc., 803 F.2d 166, 173 (5th Cir. 1986). Here, the goods at issue are relatively inexpensive and meant for typical consumers, "the sort of purchasing environment in which confusion flourishes."

12 at 174 BVE prevails on this digit.

Taken together, then, the "digits of confusion" weigh solidly in favor of a finding of a likelihood of confusion. Combined with BVE's evidence that it does possess the legally protectable trademark at issue, the Court finds that BVE has demonstrated a likelihood of success on the merits for the purposes of obtaining a temporary restraining order against Defendants.

# 2. Inspushie Harm

Next, the Court conductes that INE has demonstrated the threatest frequently harm should a temperary restraining order not be issued. The Fifth Circuit has not desided the question of whether a finding of a likelihood of totalistics excess a presumption of investible harm. See Emend Cop Mant., I.-I.-C. is Kein, 624 B. Apple 273, 274 (5th Cir. 2015) (per surface) feiting Paulson Graphysical Sens., Inc. is Signer, 529 R. M. M. (5th Cir. 2008)). However, in a trademark case, the Hith Circuit has held that "datasec could not be fully impaired by monetary temeslies," justifying injunctive rolled, when "the small consecutive of the plaintiff's potential customers may have been examined by the defendants providing services under the plaintiff's mark; there was a threat to the goodwill and value of the plaintiff's mark because the defendants were confinsing to use the mark while modifying the product associated with it; and any stamage to goodwill could not be quantified." Id. (citing Paulson Cophysical Leve., 229 F. M. at 3.13); accord for Pharm., Inc. a. Andrew Coph., 369 F. 3d '00, 726 (3d Cir. 2004) ("Generals for inseparable injury include loss of control of reputation, loss of trade, and loss of goodwill."), Reflater N. Cent., Inc. a. Cook, 222 F. 3d 424, 432 (7th Cir. 2001) ("The most corrected and inappendix lagrants for the defendants goods.").

Here, BVE argues that "Defendants' indivinging acts have and continue to irreparably harm.

BVE's goodwill and brand confidence, its representation its exclusivity over the marks and its ability to central the quality of the mark." (App. TRO, Dkr. & at 19). In BVE's telling, "Jijhs extent of the harm to BVE's reputation and goodwill and the possible diversion of customers due to loss in brand confidence is irreparable and incalculable." (I.C.). Consequently, the Court Ends that BVE has shown a threat to the goodwill and value of its mark and a difficulty in quantifying damage to it, justifying a finding in turn of interparable harm. See Pendage Confidence, 529 F.3d at 313.

# 3. Balance of Hardships

The Court linds that the balance of hardships tilts in favor of BVE. BVE asserts that it "has spent significant time and money promoting its mark and the Brochette Express Products." (App. TRO, Dist. 3, at 20). Particularly in the essent that Distendants are indeed willfully infringing BVE's mark, the balance of hardships in this case favors BVE. Set J & H Indian, Inc. a. Salandar, 932 F. Supp. 2d 754, 765 [N.D. Ter. 2013].

# 4. Public listerest

The Chart also concludes that "pleotecting [EVE's] valid trademark from infringement by a junior user" with a temporary restraining order would not "disserve the public interest." Quantum Fance Corp. v. Quantum Liftight Centers, L.L.C., 83 F. Supp. 2d 810, 832 (S.D. Tex. 1999). "The public interest is always served by requiring compliance with Congressional statutes such as the Landam Act and by enjoining the use of infringing marks," so temporary injunctive relief is warranted here. Id.

## 5. Bond

Under Federal Rule of Caril Procedure 65(c), the Court may only issue a temperary restraining or far if the morting party "gives security in an amount that the excurt considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." EVE take the Court to set a band of \$10,000 or less "because of the strong and unequivocal nature of EVE's evidence of counterfeiting, infringement and unfait competition."

[App. TRO, Disc 3, at 36].

The Court foods that a \$10,000 board is appropriate. It will properly assure Defendants that they "may readly collect damages from the funds posted . . . in the event that [they were] wrongfully enjoined, without further lidgetion and without regard to [BVE's] possible baselvency." Continuum Co. v. Incepts, Inc., \$73 F.2d \$01, \$03 (5th Cir. 1989), on reconsideration sub-now. Continuum Co. v. Incepts,

Inc., 901 F.2d 1111 (5th Cir. 1990). And it will provide BVE with "notice of the maximum extent of its potential liability, since the amount of the bond is the limit of the damages [Defendants] can obtain for a wrongful injunction, . . . provided [BVE] was acting in good faith." Id. (quoting Coppe Delany Co. v. Capital Dec. But of State of Ill., 717 F.2d 385, 393 (7th Cir. 1983)).

### III. ASSET FREEZING ORDER

Next, BVE requests that the Court enter an adder "resitabling the Defendants" assets through the time of trial to preserve the status quo" to protect "BVE's right to an equitable accounting of Defendants' infringing profits." (App. TRC), Dkr. 3, at 23). "Because [BVE] seek[s] equitable relief, the district court [is] authorized to preserve the status quo by entering a limited asset freeze." Animale Gap. Int. a. Sunny's Perfume Int., 256 F. App's 707, 709 [5th Cir. 2007] (per curiant) (citing Maltina Corp. a. Cang Bouling Co., 613 F.2d 582, 584–85) (5th Cir. 1980)); accord, e.g., Law Samuse & Co. a. Sunrisa Int. Trading Inc., 51 F.3d 982, 986–87 (Linb Cir. 1995); Brebok Int., Lid. a. Manageric Enters., Inc., 970 F.2d 552, 559 (9th Cir. 1992); we generally Gauge Maximum de Desarrollo, S.A. a. Addinger Bond Fund, Inc., 527 U.S., 308, 333 (1999). BVE argues that "Defendants will likely distregard their responsibilities and fraudulently transfer financial assets out of Information Webstores or payment accounts to overseas accounts before judgment is issued." (App. TRO, Dist. 3, at 23).

required the plaintiff to "distinguish among the defendants on the basis of their involvement in the alleged [unlawful acts] or their present or future cisk of asset concealment or dissipation." Newly a Hinton Corp., 188 F. Supp. 2d 684, 708 (S.D. Tex. 2002). In this analysis, the plaintiff must show, using evidence in the record, that each "individual defendant" will remove the assets from the reach of [the plaintiff], so as to cause irreparable injury absent an asset frages." Id.

Here, BVE does not appreciably distinguish between Oxfondams, rending to refer to them in broad strokes. This may very well be because BVE is quable to distinguish individual Defendams

at all—let alone predict their proportionate risk of asset conceabment or dissipation—despite its reasonable efforts to do so. (See App. TRO, Dkt. 3, at 27).

So, the Court is satisfied that despite this lack of specificity, BVE has "show[n] a sufficient mesus between the assets sought to be frozen and the equivable relief [h] request[s]," and that an asset freezing order is "a reasonable measure to preserve the same specimal in aid of the ultimate equivable relief claimed." Ninlig, 188 F. Supp. 2d at 697. Messaver, "[in the cases in which such a prejudement asset-freezing injunction is granted, the cours have been presented with allegations and exidence showing that the defendants were concealing assets, were transferring them so as to place them out of the reach of postjudgment collection, or were dissipating the assets." Id BVE has trade such allegations. (See, e.g., Hart Decl., Dkt. 3-1, at 10 ("The counterfeiters are in constant communication with each other and regularly participate in whithe private chat rooms and through websites . . . to discuss factics for . . . withdrawing the balances from their seller accounts to avoid enforcement of United States judgements in China or other foreign paradictions."). Consequently, the Court will grant BVE's request for an asset freezing order.

#### IV. MOTION FOR EXPEDITED DISCOVERY

BVE also requests that the Court enter an order "allewing expedited discovery into the bank and payment system accounts Defendants use for their counterfeit sales operations and electronic mail addresses to perfect service of process by electronic means." (App. TRO, Dkt. 3, at 25). Federal Rules of Civil Procedure 34(b) and 26(d) allow a party to seek espedited discovery of the type BVE requests, and the Fifth Circuit has permitted such discovery in certain circumstances. See, e.g., FMC Cap. a Vana Int'l, Inc., 677 F.2d 500, 501 (5th Cir. 1982) (affirming district court's order authorizing expedited discovery before a hearing on a preliminary injunction). Couling a Funding Resource Group.

227 F.3d 221, 233 (5th Cir. 2000) (affirming a district court's order of expedited discovery).

Although the Federal Bules do not provide a standard for the Court to use in exactsing in authority to order expedited discovery, courts generally use either a "preliminary-injunction state analysis" or the "good cause standard" to determine whether a party is entitled to conduct expedited discovery. Let 4g., Grantial a Figur, No. 415 CV-41, 2016 WL 862312, at \*1 (S.D. Tex. Jan. 29, 2016). The lifth Grenit has not expressly adopted either standard, but several district courts within the Fifth Grenit have used the good cause standard. Id "In determining whether good cause exists, courts often consider '(1) whether a positivinary injunction is pendings (2) the breacht of the discovery requests; (3) the purpose for requesting the expedited discovery (4) the builden on the determinate to comply with the requesting stal (5) how far in advance of the typical discovery process the request was made." Id at '2 (greening St. Lanis Grp., Lac a Matale & Addition Corp., 205 FR.D. 236, 240 (S.D. Tex. 2011)). The builden of showing good cause is on the party seeking the expedited discovery should be narrowly tailoned in scope. St. Lanis Grp., 275 FR.D. at 240.

Though Defendants have not been afforded the opportunity to respond to BVE's arguments, the Court finds that under the good cause standard, BVE's request for exposited discovery should be granted. An injunction is pending and the esquests are appropriately tailored and made for a reasonable purpose. The information to be discovered is likely relatively easily available to Defendants as well as their banks and payment processors. (See Prop. Order, Dkt. 3-12, at 5-7). While BYE made its request well in advance of the typical discovery timetine, the limited maure of the discovery it seeks does not substantially alter the normal course of the case in a way that would seriously projudies Defendants. Accordingly, the Court will allow BYE to conduct limited especiated discovery of the maure it has contined in its proposed order.

#### V. MOTION FOR ALTERNATE SERVICE

Finally, BVE requests that the Court corer an order allowing it to serve Defendants by email

\*\*The address\* es they list in their ordine storedwarts. (App. TRO), Dkt. 3, at 26). "BVE has been

unable to determine the exact physical whereabouts or identities of each Defendant due to the lack

of and/or take contact information on each Defendant's Infininging Webstores," but "bas good

cause to suspect [that] many if not all Defendants are Chinese residents." (Id. at 27).

Pedetal Rule of Civil Procedure 4(f) allows service of people located outside the Obited. States by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajectical Documents"; "if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give motice", or "by other means not probibited by international agreement, as the court orders." Service pursuant to Hagne Convention procedures is required only if the method of serving process involves the transmittal of documents abroad. In determining whether service involves the **transmittal of** documents abroad, courts are to look to the method of service prescribed by the internal law of the forum state." Sheets v. Yamaha Mahar Carp., U.S.A., 891 F.2d 533, 537 fath Car. 1990) [ching Valkswagenwerk Aktiengesellschaft v. Schlank, 486 U.S. 694, 698 (1988)). Moreower, "[a]se of Hague Service Convention procedures is mandaracy if available at the place of service," but the **Hagne "shall** not apply where the address of the person to be served with the document is not **Looms." Geo**mercy Inc. Co. v. Kavanagh, No. 3:19-CV-1254-D, 2011 WL 1791241, at \*1 (NID: Tess. May 10, 2011): (queting Convention on the Service Abread of Judicial and Extrajudicial Decuments th Ovl at Countrercial Mattets art. 1, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163). In that **event. "[c] ant**is have broad discretion in ordering service winder Rule 4(f)(3) so long as the service is **consistent wi**th the due process requirements of reasonable notice and an opportunity to be heard. F

Id. The abiernate service method must be "reasonably calculated, under all circomstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Multiple a, Curl. Hanover Burk & Thea Co., 339 U.S. 306, 312 (1950).

Plers, the Court concludes that alternate service by email on Defendants is permissible under the Hagor Convention. Rule 4(f), and the requirements of due process. BVE has established that it has been made to locate Defendants personally or discover their addresses, despite its efforts to do so. See Grangy Les., 2011 WL 1791241, at "1. (App. TRO), Dkt. 3, at 27-29). BYE has also established that Decendants both must use small to "communicate with consumers" and "maintain contact" with economics platforms and "must provide electronic mail addresses for their payment accounts to accept payments for the Counterfelt Products." (App. TRO, Dkt. 3, at 29); of RPost Haldings, Inc. v. Kayan, No. 2:11-CV-238-JRG, 2012 WL 194388, at \*2 (E.D. Tex. Jan. 23, 2012) finding "no material doubt" that defendants would be provided notice by email when plaintiff had previously "successfully and repeatedly reached [defendants] via email"). Courts often authorize email service suben the record discloses dibgent effects by the plaintiff to obtain a physical address to effect traditional service, that the defendant does business on line (particularly business related to the subject of the suit, and that the defendant has recently communicated using the e-mail address the plaintiff proposes to use for service." Colleg a Dog No. CTV.A. H-10-2882, 2010 WL 4954727, at "I (S.D. Tex. Nov. 30, 2010) (collecting cases). Most if not all of those circumstances are found here. Therefore, the Court will allow BVE to serve Defendants in the manner BVE outlines in its proposed order, (for Prop. Order, Dkr. 3-12, ar 8).

#### VI. CONCLUSION

For the teasons discussed above, IT IS ORDERED that each of BVE's respects in its combined expanic application for a temporary testisability order ("TRO") and asset freezing order, motion for expedited discovery, and motion for alternate service of process, (Dkt. 3), is

GRANTED. This Order is issued without notice to Defendants due to **BVB's representations** that it has been unable to obtain definitive contact information for them despite rescondble efforts and that notice would likely impair BVI's rights to an equitable accounting. **In Fed. Chr. R.** P. 65(b)(1)–(2): (App. TRO, Dkr. & at 12).

## A. Temporary Restraining Order

IT IS ORDERED that Defendants, their affiliates, officers, ageins, activates, employees, attorneys, and all persons acting for, with, by, through, under, or in active concert with them be temporarily enjoined and restrained from:

- 1. Using the BROCHETTE EXPRESS trademark or any reproduction, counterfeit copies or colorable imitations thereof in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine BROCHETTE EXPRESS product or not authorized by BVE to be sold in connection with the BROCHETTE EXPRESS trademark;
- 2. Passing off, including, or enabling others to sell or pass off any product as a genuine BROCHETTH EXPRESS product or any other product produced by BVE, that is not BVE's or not produced under the authorization, control, at supervision of BVE and approved by BVE for sale under the BROCHETTE PARKS redemark;
- 3. Committing any acts calculated to cause consumers to believe that Defendants' Counterfeit Products, including, without limitation, those identified in BVE's complaint, (Dist. 1), Schedule A, (Dist. 1-1), and Exhibits 4-85 in the combined exparts application, (Dist. 3-2, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8), are those sold under the authorization, control, or supervision of BVE, or are spotnested by, approved by, or otherwise connected with the BROCHETTE EXPRESS tradeback of BVE;

- 4. Manufacturing, shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manuer, products or inventory not manufactured by or for BVE, nor authorized by BVE to be sold or offered for sale, and which bear the BROCHETTE EXPRESS trademark, or any reproductions, counterfeit copies, or colorable imitations thereof and
- 5. Using, linking, transferring, selling, exercising control over, or otherwise owning or operating the infringing webstores, websites, or any other domain name that is being used to sell or is the means by which Defendants could continue to sell Counterfeit Products.

IT IS FURTHER ORDERED that Defendants, their affiliates, officers, agents, servants, employees, attorneys, and all persons acting for, with, by, through, under, or in active concert with them be temporarily enjoined and restrained from:

- Moving or destroying, or otherwise disposing of any items, merchandise or documents relating to the Counterfeit Products, Defendants' intringing webstores and/or websites, and/or Defendants' assets and operations; and
- 2. Removing, destroying, or otherwise disposing of computer files, electronic files, business records, or documents relating to any of Defendants' infringing webstores, websites, assets, operations, or relating in any way to the manufacture, acquisition, purchase, distribution or sale of counterfeit products, or any reproduction, copy or colorable imitation of the EROCHETTE EXPRESS trademark.

IT IS FURTHER ORDERED that within 14 days of receiving notice of this Order,

Defendants shall serve upon BVE a written report under each providing (a) their true names and

physical addresses; (b) all websites and online marketplace accounts on any platform that they own

and/or operate; (c) their financial accounts, including but not limited to all Amazon, eBay, Wish,

DFK ats, All Express, Alibaba, PayPal, Western Union, Payoneer, and/or Worldfirst accounts; and (d) the steps taken by Defendants to comply with the Court's orders listed above.

IT'IS FURTHER ORDERED that this Order shall apply to the infringing webstores and websites and any other domain names properly brought to the Court's attention by sworn affidavit that resides such new webstores or domain names are being used by Defendants for the purpose of counterfeiting the BROCHETTE EXPRESS trademark at issue in this action and/or unfairly competing with BVE.

II IS FURTHER ORDERED that upon five days' written notice, or on shorter notice as see by the Court in a separate order, any Defendant may appear and move to dissolve or modify this Order upon an appropriate evidentiary showing.

IT IS FURTHER ORDERED that BVE shall file a bond, each or surety, in the amount of \$10,000.00, with the Court.

TI IS FINALLY ORDERED that this Order shall remain in effect for 14 days unless, before that period expires, BVE moves for an extension and demonstrates good cause for one extension of 14 days. See Fed. R. Civ. P. 65(b(2).

# B. Expedited Discovery Order

IT IS ORDERED that BVE may immediately commence discovery by providing assoal morice of this Order, by subpoena or otherwise, to any of the following parties:

- Defendants, their affiliants, officers, agents, servants, employees, attorneys, and all
  persons acting for, with, by, through, under, or in active concert with them.
- 2. Any banks, savings and loan associations, payment processors or other financial institutions, including, without limitation, Amazon, eBay, Wish, Ali Express, Alibaba, DHGate, PayPal, Western Union, Payoneci, Worldfirst, or other merchant account.

- providers, payment providers, third party processors, or credit card associations that receive payments or hold assets on Defendants' behalf and
- 3. Any third-party service providers, including, without limitation, Internet Service Providers (ISPs), back-end service providers, web designers, sponsored search engine or ad-word providers, shippers, demain name registrate, domain name registrate, or ordine third-party sellers who have provided services for Defendants (collectively, "Third Party Providers").

Within five days after receiving BVE's notice, the parties listed above shall provide expires of all documents and records in their possession or control relating to:

- 1. The identifies and addresses of Defendants, their affiliates, officers, agents, servants, coupleyees, attentices, and all persons acting for, with, by, through, under, or in active concert with them and the location and identifies of Defendants' operations, including, without limitation, identifying information associated with Defendants' infringing webstores, websites, and through accounts;
- 2. The nature of Defendants' operations and all associated sales, methods of payment for services and financial information, itselfuting, without limitation, identifying information associated with the infringing subsites and Defendants' financial accounts, as well as providing a full accounting of Defendants' sales and listing history related to the infringing websites:
- Defendants' infringing websteres, websites, and any domain name registered by Defendants; and
- 4. Any financial accounts owned by or convalled by Defendants, including fineir agents, servants, employees, anomeys, and any persons acting in concert or participation with them, including such assessms residing with or under control of any banks,

savings and lown associations, payment processors or other financial institutions, including, without limitation, Amazon, eBay, Wish, Ali Express, Alibaba, DHGate, PayPal, Western Union, Payoneer, or Worldfirst, or other marchant account providers, payment providers, third party processors, and/or excite rand associations that receive payment or hold assets on Defendants' behalf.

## C. Asset Freezing Order

I'll IS ORDERED that Defendants and any person in active concert or participation with them who have actual notice of this Order shall be temporarily restrained and enjoined from transferring or disposing of any money or other of Defendants' assets until forther undered by the Court.

IT IS FURTHER **ORDERED** that Amazon, eBay, Wish, DHEate, Alibaba, Ali Espress, and their affiliates shall, within two business days of ceceipt of this Order, block my money transfers and funds from being transferred by Defendants, (see Sched. A, Dkt. 1-1), until further notice by the Court.

I'll IS FURTHER **ORDERED** that PayPal, Payoneer, Worldfirst (collectively, "Payment Processors), shall, within two business days of receipt of this Order, for any Defendant or any Defendant's infringing websites, locate all accounts and funds connected to Defendants and the infringing websites, including burner limited to, any Payment Processor accounts connected to the infranction listed in Schedule A, (Okn. 1-D), and any small addresses provided for Defendants by third parties."

The loss proposed order, RVF suggested that the Court order the Payment Processes to "[Jestiain and enjoin any such accounts or funds that are non-IIS. based from transferring or disposing of any account or other of Defendants" assets until further ordered by the Court." (Prop. Order, Dkt. 3-12, at 7). In its motion, BVE did not provide authority for the proposition that the Court can lawfully or effectively sucker that accounts and funds located austide the United States be increas. [Six App. TRO, Dkt. 3, at 23-24). Should BVF wish to file an additional motion providing a basis for this relief, the Court will entertain it.

TT IS FINALLY CREEKED that any banks, savings and loan associations, payment processors, or the formula for any Defendant or any of Defendants' infringing websites, shall within the besites of receipt of this Order, locate all accounts and funds connected to Defendant and the besites greekes, including, but not limited to, any financial accounts connected to the first of the besites are tained in Schedule A, (Dkt. 1-1), and any email addresses provided for Defendant by third parties.

#### Alternate Service Order

IT IS DETECTION THE PARTY provide notice of these proceedings to Defendants, notice of the preference injunction bearing to be scheduled in short order, and service of process of the Complaint and any annual next provided for Defendants by third parties hosting their webstores, such as Amazon, elias, wisk IN Complaints and Alibaba. Providing notice through this alternative means, along with any motion that Defendants receive from webstore hosts and payment processors, shall constitute notice manually calculated under all circumstances to apprise Defendants of the pendency of the processor and all them assonable opportunity to present their objections in satisfaction of the pendency of the pend

SIGNED on Nas 14, 2020, at 257 p.m.

ROBERT PITMAN

UNITED STATES DISTRICT JUDGE

<sup>+</sup> See note 3, repeat